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No. 2833

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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COLUMBIA AND NEHALEM RIVER  
RAILROAD COMPANY, a Corporation,  
and A. S. KERRY,

*Appellants,*

vs.

ELBERT G. CHANDLER and NORTH-  
WESTERN EQUIPMENT COM-  
PANY, a Corporation,

*Appellees.*

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## TRANSCRIPT OF RECORD

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Upon Appeal from the District Court of the United  
States for the District of Oregon.

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*United States Circuit Court of Appeals  
For the Ninth Circuit*

COLUMBIA AND NEHALEM RIVER  
RAILROAD COMPANY, a Corporation,  
and A. S. KERRY,

*Appellants,*

vs.

ELBERT G. CHANDLER and NORTH-  
WESTERN EQUIPMENT COM-  
PANY, a Corporation,

*Appellees.*

Names and Addresses of the Attorneys of Record:

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*for Appellees.*

## CITATION ON APPEAL.

United States of America,  
District of Oregon,—ss.

To Elbert G. Chandler and Northwestern Equipment  
Company, a corporation, plaintiffs,

Greeting:

Whereas, Columbia and Nehalem River Railroad, a corporation, and A. S. Kerry, defendants, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, in said District, this 26th day of April, in the year of our Lord, one thousand, nine hundred and sixteen.

CHAS. E. WOLVERTON,

Judge.

I hereby accept service of the foregoing citation on behalf of Elbert G. Chandler and Northwestern Equipment Company, plaintiffs and appellees.

W. R. LITZENBERG,

Attorney for said Plaintiffs and Appellees.

Filed April 26, 1916.

G. H. MARSH, Clerk.

*In the District Court of the United States for the  
District of Oregon.*

July Term 1915.

BE IT REMEMBERED, That on the 19th day of August, 1915, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to-wit:

### BILL OF COMPLAINT.

*In the District Court of the United States for the  
District of Oregon.*

Elbert G. Chandler and Northwestern Equipment Co.,  
a corporation,

*Plaintiffs,*

vs.

Columbia & Nehalem River R. R. Co., a corporation,  
and A. S. Kerry,

*Defendants.*

To the Judges of the District Court of the United States  
for the District of Oregon:



Elbert G. Chandler, of Portland, Oregon, and the Northwestern Equipment Co., a corporation of the State of Oregon, having its principal office and place of business at Portland, Oregon, brings this their bill of complaint against the Columbia & Nehalem River R. R. Co., a corporation of Oregon, with an office at Kerry, Oregon, and A. S. Kerry, of Kerry, Oregon, all residents and citizens of the State of Oregon, and inhabitants of the District of Oregon, and for cause of suit plaintiffs allege as follows, to-wit:

I.

That heretofore and on or before the 25th day of February, 1915, Elbert G. Chandler, one of the plaintiffs herein, was the true, original and first inventor of certain new and useful improvements in logging trucks not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application for patent therefor hereinafter recited, and not in public use or on sale in the United States for more than two years prior to his application for patent therefor, hereinafter recited; and that no application for a foreign patent for said invention was filed more than twelve months prior to the filing of the application for the hereinafter recited patent in this country.

## II.

That the said Elbert G. Chandler, being as afore-said the inventor of said improvements, and being a citizen of the United States, made application to the proper department of the Government of the United States, to-wit, the Commissioner of Patents, for letters patent in accordance with the then existing acts of congress, and having complied in all respects with the conditions and requirements of said acts, on the 25th day of May, 1915, letters patent of the United States No. 1,140,875, signed, sealed and executed in due form of law for said invention or discovery, were issued and delivered to the said Elbert G. Chandler, whereby there was secured to him and to his heirs, legal representatives and assigns for the term of seventeen years from the 25th day of May, 1915, the full and exclusive right of making, using and vending said improvement to others to be used, which said letters patent are now of record in the patent office of the United States, and the original or a certified copy of which is ready here in court to be produced.

## III.

That a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent, accompanied by said drawings referred to in such schedule and forming a part of said letters patent. The said letters patent and the said specifications thereto annexed, which, or an exemplified copy of which, plaintiff will produce as directed by this court, were duly recorded in the patent office.

IV.

That this plaintiff Elbert G. Chandler, is President and one of the Directors and principal Stockholders of plaintiff, the Northwestern Equipment Co., and through said Northwestern Equipment Co., he has been and is engaged in the manufacture and sale of Logging Trucks built according to the specification and claims of said letters patent; that said plaintiff Elbert G. Chandler is the exclusive owner of said letters patent and of the invention and improvement therein described, and claims and owns all rights secured by said letters patent since the date thereof and is entitled to be protected in the enjoyment of the same.

V.

Yet the said defendant, well knowing the premises and the rights secured to your orators, as aforesaid, but contriving to injure your orators, and to deprive them of the benefits and advantages which might and otherwise would accrue unto them from said invention after the issuing of the letters patent and after the vesting of the same in your orators, as aforesaid, and before the commencement of this suit, did, as your orators are informed and believe, without the license or allowance and against the will of your orators, and in violation of their rights and in infringement of the aforesaid letters patent within the District of Oregon and elsewhere in the United States unlawfully and wrongfully, and in defiance of the rights of your orators, make or have made for its use, logging trucks

made according to and employing and containing said invention, and that it now is in possession of and is using a large number of said logging trucks, all in defiance of the rights acquired by and secured to your orators, as aforesaid, and to their great and irreparable loss and injury, and by which they are and still are being deprived of great gain and profits which they might and otherwise would have obtained, and which have been received and enjoyed, and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

## VI.

And your orators further show unto Your Honors, that said defendant did, on or about the 5th day of February, 1915, order from your orators thirty (30) sets of logging trucks embodying the invention and improvements of your orator Elbert G. Chandler, at the price of Seven Hundred (700) Dollars per set; that said order was confirmed, in writing, by these plaintiffs on or about February 6, 1915; that thereafter and on about February 11th, 1915, and after these plaintiffs had ordered material for the construction of said trucks so ordered by said defendants, defendant A. S. Kerry came to Portland and informed your orators that the Seattle Car and Foundry Co. had made him a better price on the same kind of truck; that your orators informed Mr. Kerry at the time that said logging truck was his invention, and that no one else could build or use it without infringing his rights; that said defendant A. S. Kerry advised your orators that it was a

matter of money with him and that these plaintiffs could either take one-half the order at a price of Six Hundred Twenty-five (625) Dollars per set, or that he would place all of it elsewhere; that your orators were thus, not only forced to take one-half the order for its improved logging trucks, as originally placed, and for which materials had already been ordered, but were forced to take said one-half order at a greatly reduced price, and these plaintiffs reluctantly and under protest undertook to fill the half order at the reduced price.

## VII.

And your orators further show unto Your Honors, on information and belief, that said defendants have purchased from others than your orators large quantities of logging trucks built according to the specification and claims of the letters patent hereinbefore referred to, and have made and realized large profits and advantages in so doing, but to what extent and how much your orators do not know and pray a discovery thereof. And your orators say that the use of said invention by said defendants and their determination to continue the same, and their unlawful acts as aforesaid, in disregard and defiance of the rights of your orators, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orators' rights.

And your orators further show unto Your Honors, that they have caused notice to be given to said defendant of said infringement and of the rights of your



orators in the premises, and requested them to desist and refrain therefrom; but defendants have disregarded said notice and refused to desist from said infringements, and still continue to use and purchase for use, logging trucks which infringe said letters patent owned and controlled by these plaintiffs.

And forasmuch as your orators have no adequate relief except in this court, to the end that the defendants may be compelled to account for and to pay over the income and profits thus unlawfully derived from the violation of the rights of your orators as above, and be restrained from any further violation of said rights, your orators pray that Your Honors may grant a writ of injunction, restraining the defendants and each of them and their agents from any further construction, or sale or use in any manner of said patented invention or any part thereof, in violation of the rights of your orators as aforesaid, and that the logging trucks now in the use of the said defendants may be destroyed, or delivered up to your orators for that purpose. And also, that Your Honors, upon the entering of a decree for infringement, as above prayed for, may proceed to assess, or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendants as aforesaid, the damages your orators have sustained by reason of such infringement, and that Your Honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the wilful and unjust infringement by the said defendant as herein set forth.

And your orators also pray for a provisional or preliminary injunction, and for such other relief as the equity of the case may require, and as to Your Honors may seem meet.

ELBERT G. CHANDLER,  
Northwestern Equipment Company,

By E. G. CHANDLER, Pres.,  
Complainants.

W. R. LITZENBERG,  
Solicitor for Complainants.

United States of America,  
State of Oregon,  
County of Multnomah,—ss.

On the 18th day of August, 1915, at Portland, in the County and State aforesaid, before me personally appeared Elbert G. Chandler, and solemnly affirmed that he has read the foregoing Bill and knows the contents thereof, and verifies this complaint for himself and his co-plaintiff, and that he knows that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true, and thereupon subscribed the same.

I. M. GRIFFIN,  
Notary Public within and for the  
County of Multnomah, State of Oregon.

(Seal)

Filed August 19, 1915.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 23rd day of October, 1915, there was duly filed in said Court and cause, an answer in words and figures as follows, to-wit:

### ANSWER.

To the Honorable Judges of the District Court of the United States, for the District of Oregon:

Come now the Columbia and Nehalem River Railroad, a corporation, erroneously impleaded as the Columbia and Nehalem River Railroad Company, and A. S. Kerry, the above named defendants, and answering the Bill of Complaint herein admit, deny and allege as follows, to-wit:

#### I.

Said defendants deny that heretofore or on or about the 25th day of February, 1915, or at any time, the plaintiff Elbert G. Chandler was the true, original or first inventor of any new or useful improvement in logging trucks, or of any improvement in logging trucks not known or used by others in this country before his alleged invention or discovery thereof, or of any improvements in logging trucks not patented or described in any printed publication in this or any foreign country, before his alleged invention or discovery thereof, or more than two years prior to his application for patent therefor, or of any improvement of logging trucks not in public use or on sale in the United States for more than two years prior to his application for patent therefor; and these defendants are without knowledge whether any application for a foreign patent for said alleged



invention was filed more than twelve months prior to the application by the said plaintiff for his patent in the United States.

## II.

These defendants deny that the said Elbert G. Chandler was the inventor of said or any improvements, but admit that he did make application to the Commissioner of Patents for letters patent on an alleged invention, and that patent therefor was issued to him, but these defendants deny that the said Elbert G. Chandler complied in all or any respect with the conditions or requirements of the acts of Congress relating to the issuance of patents, and deny that by the issuance of said letters patent there was secured to him or to his heirs or legal representatives or assigns, for any terms of years, the full or exclusive or any right of making or using said alleged improvement, or vending the same to others to be used.

## III.

These defendants are without knowledge whether or not said plaintiff Elbert G. Chandler, is president or one of the directors, or one of the principal stockholders of plaintiff, the Northwestern Equipment Company, and are without knowledge whether or not through said Northwestern Equipment Company said plaintiff has engaged in the manufacture or sale of logging trucks built according to the specification and claims of said letters patent, except that these defendants admit that said Northwestern Equipment Company did sell to the

said Columbia and Nehalem River Railroad certain logging trucks having the outer draw-bar of standard height and the inner draw-bar below standard height. These defendants are without knowledge whether the said plaintiff Elbert G. Chandler is the exclusive owner of the said letters patent, but deny that he is the exclusive owner, or the owner at all, of any invention or improvement therein described. These defendants deny that any rights are secured by said letters patent and deny that the said Elbert G. Chandler is entitled to be protected in the enjoyment of any rights under said letters patent.

#### IV.

These defendants admit that the defendant Columbia and Nehalem River Railroad has ordered from the plaintiff, Northwestern Equipment Company, certain logging trucks having the outer draw-bar of standard height and the inner draw-bar below standard height, and has ordered and procured from the Seattle Car and Foundry Company, a corporation of the State of Washington, having its principal place of business in Seattle, in said State, twenty sets of the said trucks, and that the defendant Columbia and Nehalem River Railroad has used the said logging trucks in its logging operations, but defendants deny that they at any time knew, or that they now know, that the plaintiff Elbert G. Chandler was the inventor of any improvement employed or contained in such logging trucks, or any of them, and deny that they knew at the time the said logging trucks were so ordered and procured that the said Elbert G. Chandler claimed to be the inventor of any improvement em-

bodied or contained in said logging trucks, or that he had made application for or received United States patent for any such alleged invention or improvement, and deny that the defendants or either of them, at any time contrived or intended to injure plaintiffs, or either of them, or to deprive the plaintiffs, or either of them, of any benefits or advantages which might otherwise accrue to them, or either of them, from any invention either before or after the issuance of the said letters patent; and these defendants deny that they have at any time infringed or violated any rights of the plaintiffs, or either of them, or that the defendants or either of them have acted wrongfully or unlawfully or in defiance of any rights of the plaintiffs, or either of them, in causing to be made or in using the said logging trucks, and these defendants deny that any loss or injury has been occasioned to plaintiffs, or either of them, by these defendants, and deny that the plaintiffs, or either of them, have at any time been or are being deprived of any gains or profits which they might or would have obtained, and deny that these defendants have received or enjoyed, or are receiving or enjoying any profits or gains to which the plaintiffs, or either of them, are or at any time have been entitled.

## V.

These defendants deny that they, or either of them, did on or about the 5th day of February, 1915, or at any time order from the plaintiffs thirty sets of logging trucks embodying any invention or improvement of the said Elbert G. Chandler, and deny that any such

order was confirmed in writing or otherwise by the plaintiffs, and deny that said Chandler informed A. S. Kerry that said logging truck was his invention, but admit that the defendant Columbia and Nehalem River Railroad did order from the Seattle Car and Foundry Company twenty sets of logging trucks having their outer draw-bars of standard height and their inner draw-bars below standard height, and that said defendants did order from the said plaintiff, the Northwestern Equipment Company, fifteen sets of such logging trucks, and that it was understood and agreed by and between said defendant and the plaintiff Northwestern Equipment Company that said trucks should be furnished, and they were furnished, at the price of \$625.00 per set, and that said defendants required the said plaintiff to furnish the said logging trucks at the same price at which the Seattle Car and Foundry Company had offered to furnish the same; but these defendants deny that the plaintiffs were forced to take, accept or fill the said order, and deny that the plaintiffs had ordered materials for any greater number of logging trucks than said defendants actually took.

## VI.

That defendants deny that they have purchased any logging trucks built according to the specifications or claims of the said letters patent, except that they admit the defendant Columbia and Nehalem River Railroad has purchased from the Seattle Car and Foundry Company and from the plaintiff Northwestern Equipment Company, the logging trucks hereinabove described;

and defendants deny that they have made or realized large or any profits or advantages in so doing, and deny that they have used any invention of the plaintiffs, or either of them, and deny that they intend to use any invention of the plaintiffs, or either of them, and deny that the defendants, or either of them, have committed any unlawful acts or have disregarded or defied any rights of the plaintiffs, or either of them, and deny that the defendants, or either of them, have infringed or have encouraged or induced any one else to infringe any rights of the plaintiffs, or either of them; and these defendants admit that the plaintiffs have notified the defendants that they, the plaintiffs, claim the exclusive right to construct and sell logging trucks having the outer draw-bars higher than the inner draw-bar, and that the defendant the Columbia and Nehalem River Railroad has refused to desist from using the said logging trucks so purchased by it from the Seattle Car and Foundry Company; but defendants deny that they, or either of them, have infringed any right of the plaintiffs, or either of them, and deny that the defendants or either of them have used or purchased or continue to use or purchase for use, any logging trucks which infringe any rights of the plaintiffs, or either of them.

For a first further and separate answer and defense to said Bill of Complaint, these defendants allege that the said Elbert G. Chandler was not the original or first inventor or discoverer of any part of the alleged invention or improvement described in the said patent claimed by him, but that during or prior to the month of November, 1914, and long prior to the alleged in-



vention of the said improvement by the said Elbert G. Chandler the defendant A. S. Kerry did inform the said Elbert G. Chandler and the Northwestern Equipment Company, as well as the Seattle Car and Foundry Company, that he desired to have built for use upon the logging railway of the defendant Columbia and Nehalem River Railroad, logging trucks having the draw-bar or coupling apparatus at the outer end of standard height, so as to couple with standard equipment, and the draw-bar or coupling apparatus at the inner end below standard height so that said inner draw-bar and coupling apparatus would not interfere with long logs which might sag in the course of transportation, and that said alleged improvement which is embodied in said patent of Elbert G. Chandler was and is simply the idea so suggested by the said A. S. Kerry to the said Elbert G. Chandler, and that the said Elbert G. Chandler has surreptitiously, wrongfully and unlawfully endeavored to appropriate to himself and obtain exclusive use and benefit of said suggestion and idea so communicated to him.

For a second further and separate answer and defense to said Bill of Complaint, defendants allege:

That the so-called invention or improvement described and embodied in the said letters patent does not involve or contain any patentable novelty, invention or discovery, nor cover or disclose any new art, machine, manufacture or composition of matter, nor any new or useful improvement thereof, and that the said alleged invention involves and comprehends only an obvious,

well known and purely mechanical expedient or adjustment of familiar devices and appliances.

For a third further and separate answer and defense to said Bill of Complaint, defendants allege:

That neither the alleged improvement which the patent mentioned in the Bill of Complaint purports to cover, nor any element or feature thereof, was invented or discovered by the said Elbert G. Chandler, but that the said improvement and all essential parts and features thereof were in common use by numerous persons and well known to the public generally for many years prior to the application for said patent by the said Elbert G. Chandler, and for many years prior to his alleged invention of said improvement. That at all times since trucks, cars, car trucks and logging trucks have been in use and for much more than two years prior to the application of the said Elbert G. Chandler for the said patent it was found necessary for persons making or using such trucks, cars, car trucks and logging trucks to make, and it was common for them to make, the bodies and main frame works thereof in a great variety of forms and of many heights, so as to meet the needs of various kinds of traffic to be handled, and it was necessary for them to adapt and arrange, and they have adapted and arranged the draw-heads, coupling devices and parts connecting such trucks, cars, car trucks and logging trucks with one another and with locomotives and other apparatus, as well as those connecting together different sets of wheels under one truck or car, at various heights and in various ways as

might be deemed most convenient and desirable in view of the kinds of loads to be hauled, the mode of construction of other parts of the equipment and the height at which it might be necessary or desirable to couple with other equipment, and during all of said times it has been a common device and expedient for makers and users of trucks, cars, car trucks and logging trucks to raise or lower such draw-heads, coupling devices and connecting parts of the equipment in numerous ways and degrees and in such manner and to such extent as might be suggested or made necessary by the conditions to be dealt with. That such adjustments and devices have been numerous and it is not practicable for these defendants to specify all of them, but that the following are familiar examples and in all the following instances the equipment mentioned had been in open, public and familiar use for more than two years prior to the application of the said Chandler for the patent mentioned in the Bill of Complaint, to-wit:

In horse drawn trucks in common use in the City of Portland, Oregon, by the Oregon Transfer Company, and other persons, trucks having their tongues and draught apparatus at the usual height of wagon tongues, and their bodies and parts connecting their two sets of wheels substantially lower.

In standard railroad equipment in common use in said City of Portland and many other places, by the Northern Pacific Railroad, and other roads entering the City of Portland, locomotive tenders having the draw-heads by which they couple to the locomotives substantially higher than the draw-heads by which they



couple to the railway cars; also railway cars, both passenger and freight, having their draw-heads and coupling devices of uniform and standard height, but having their floors, platforms and bodies of varying heights, so that there are numerous differences of adjustment in the relative heights of the draw-bars and the floors, bodies and platforms; also freight cars having their ends of such height as to extend above draw-heads of standard height but having the connecting and supporting parts of the bodies between the two sets of trucks substantially lower than the ends and lower than the standard coupling.

In street car equipment in common use in the said City of Portland by the Portland Railway, Light and Power Company, several types of street cars having their platforms of different heights and their draw-heads and coupling devices likewise at different heights, both positively and relatively, to the heights of the platforms and bodies of the cars, and with bent or movable draw-bars, so as to accommodate the desired height of coupling to the height of the draw-heads of the cars; also car trucks with the wheels and frame work at the front end of the front truck and the rear end of the rear truck higher than the wheels and the frame work at the rear end of the front truck and the front end of the rear truck; also flat cars having their bodies and draught sills of the ordinary height of standard railway flat cars, but with bent draw-bars connecting with the draught sills at standard height and bent downward so as to couple with equipment below standard height.

In logging trucks, a certain logging truck built by the Seattle Car and Foundry Company in 1910, for the Marysville and Northern Railroad Company, and used on said railroad near Marysville, Washington, which car had draught timbers so placed that draw-heads could be attached thereto at either end, either at standard height or below standard height to suit the equipment to which said car was to be coupled; that the said car was thereafter returned to the Seattle Car and Foundry Company and the draw-head at the one end was placed at standard height and the draw-head at the other end was placed below standard height, so that the draw-head at standard height could be used for coupling to standard locomotives and the draw-head of lower height at the other end could be used for coupling to logging trucks below standard height, and for more than two years prior to the application of the said Elbert G. Chandler for said patent, said truck with draw-heads so adjusted was used by the Seattle Car and Foundry Company at its plant in Seattle, Washington, for hauling with a standard locomotive, logging trucks which had their draw-heads and coupling devices lower than standard.

In railway cars, certain cars built in April, 1910, by the Seattle Car and Foundry Company for the Marysville and Arlington R. R. Co., which cars had at each end extra draught timbers so constructed and arranged that the draw-heads could be attached thereto either at standard height or below standard height to suit the equipment to which they were to be coupled and

which were used for many years on the railroad of the said company in the State of Washington.

That it is, and was for many years prior to the alleged invention of the said defendant Elbert G. Chandler mentioned in the Bill of Complaint, common among builders and users of logging trucks to build such trucks of various heights so that some of such trucks were of the height of standard railroad equipment and had draw-bars at the height of the coupling appliances of standard railroad equipment, while other such trucks were lower than standard railroad equipment and had draw-heads at a height corresponding to the heights of their bodies and lower than the draw-heads of standard railroad equipment, the height of both the trucks and draw-heads being governed by the demands of the traffic and the requirements of the particular purchaser or user; and it was and is common to provide for the coupling of logging locomotives and trucks of various heights, either by having several slots of various elevations in the draw-heads of the locomotives, or by using bent or movable bars or links with which to couple the locomotive to the truck nearest to it, the other trucks of the train connecting with one another at their common height; that long prior to the alleged invention of the defendant Elbert G. Chandler, loggers who hauled logs of great length discovered that such logs were likely to sag and thus interfere with the inner ends of the trucks and the draw-heads thereon unless the trucks were so constructed as to afford greater clearance between the tops of the bunks supporting the logs and such inner draw-heads than is necessary in trucks con-

structed for hauling short logs, but that said difficulty was easily overcome by the use of low trucks with low draw-heads and bunks of sufficient height to afford the desired clearance; and not less than six years prior to the application of the said Elbert G. Chandler for the patent alleged in the Bill of Complaint, the Benson Logging Company hauled very long logs successfully on its logging railway near Clatskanie, Oregon, by using ordinary low logging trucks with high bunks and coupled to its standard locomotive trains made up of such trucks, by means of bent or movable draw-bars or links; that during all of said times it has been self-evident to makers and users of logging trucks and they have well known that if logging trucks built for coupling in trains at standard height and having low bunks were to be used for such hauling of unusually long logs, it would be necessary to provide the requisite clearance between the top of the bunk and the inner draw-bar either by raising the bunk or by lowering the inner draw-heads of each set of trucks, and in March, 1914, the Clark and Wilson Lumber Company of Linnton, Oregon, suggested to the Seattle Car and Foundry Company that it adapt its standard logging trucks to the hauling of long logs by so lowering the inner draw-heads, but the demand for trucks of such construction was not sufficient at that time to warrant their manufacture and such trucks were not manufactured by the Seattle Car and Foundry Company until after requests therefor were made by these defendants in 1914, as hereinabove alleged, but that after such requests were so made and prior to said alleged invention by the defend-

ant, Elbert G. Chandler, said Seattle Car and Foundry Company made the necessary plans and prepared to manufacture such trucks and that it has manufactured such trucks pursuant to and in accordance with such request by these defendants and in accordance with the obvious requirements of the business and not in pursuance of any invention by the said Elbert G. Chandler, nor upon any suggestion of the said Elbert G. Chandler.

For a fourth further and separate answer and defense to said Bill of Complaint, these defendants allege:

That all of the essential features, principles and elements of the alleged improvement or discovery of the said Elbert G. Chandler were disclosed and described prior to the alleged discovery or invention of the said Elbert G. Chandler and more than two years prior to his application for said patent in United States Patent No. 1032348, issued July 9, 1912, to J. W. Bettendorf, of Bettendorf, Iowa, administrator of the estate of W. P. Bettendorf, deceased, the residence of said patentee being Bettendorf, Iowa; and in United States Patent No. 1008921, issued November 14, 1911, to Gustav Komarek, of St. Louis, Missouri, whose residence is St. Louis, Missouri, and by the specifications and drawings of the said Bettendorf and Komarek patents.

WHEREFORE, these defendants pray that the Bill of Complaint be dismissed, and that they have judgment against the plaintiffs, and each of them, for their costs and disbursements herein.

VEAZIE, McCOURT & VEAZIE,  
J. C. VEAZIE,

Attorneys for Defendants.



To W. R. Litzenberg, Esq.,  
Attorney for Plaintiffs:

Please take notice that at the trial of the above entitled cause, defendants will offer evidence in support of all the foregoing defenses, matters and things.

VEAZIE, McCOURT & VEAZIE,  
Attorneys for Defendants.

Filed October 28, 1915.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 20th day of December, 1915, there was duly filed in said Court and cause, a supplemental answer in words and figures as follows, to-wit:

#### SUPPLEMENTAL ANSWER.

Come now the defendants, and, by leave of Court first had, file this their supplemental answer and as an amendment of and addition to the third further and separate answer and defense set up in the answer of the defendants herein filed, alleged as follows, to-wit:

That in May, 1910, the Hammond Lumber Company, a corporation engaged in the logging and lumbering business in Clatsop County, Oregon, ordered from the Seattle Car Manufacturing Company, of Seattle, Washington, which was the predecessor in business of the Seattle Car and Foundry Company mentioned in the answer heretofore filed herein, a certain car to be used in logging operations and so constructed that the

said car should have at one end a draw-head and standard M. C. B. tower coupler at the height of the coupling devices of the Russell logging trucks, to-wit, twenty-six (26) inches from the top of the rail to the center of the coupler, such draw-head and coupling device to be used for coupling the said car to logging trucks at the height of twenty-six (26) inches, and having at the other end a draw-head and standard M. C. B. tower coupler at the standard height of railroad coupling devices, to-wit, thirty-two (32) inches from the top of rail to the center of coupler, said car to be used for the purpose of coupling the same at one end at standard height to locomotives, or other equipment having couplers of standard height, and at the other end to logging trucks having their couplers below standard height; and that pursuant to the said order the said Seattle Car Manufacturing Company did, in or about the month of May, 1910, manufacture and deliver to the said Hammond Lumber Company a car constructed in accordance with the said order and having its draw-heads and coupling devices at different heights, as above set forth.

VEAZIE, McCOURT & VEAZIE,  
J. C. VEAZIE,

Attorneys for Defendants.

Filed December 20, 1915.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Friday, the 24th day of March, 1916, the same being the 16th Judicial day

of the regular March, 1916, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

### FINAL DECREE.

*In the District Court of the United States for the  
District of Oregon.*

Elbert G. Chandler and Northwestern Equipment  
Company,

vs.

Columbia and Nehalem River Railroad, a corporation,  
and A. S. Kerry.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed, as follows, viz.:

That United States Patent Number 1,140,875, issued to Elbert G. Chandler, May 25, 1915, for Logging Truck is for patentable subject matter and is valid;

That said patent is infringed by the logging trucks purchased by defendants in this case from the Seattle Car and Foundry Company, and now being used by said defendants;

That said defendants, and each of them, their agents and representatives, are hereby enjoined from any further construction, or sale, or use in any manner of said patented invention in logging trucks, including the fur-



ther use of the 20 sets so purchased from said Seattle Car and Foundry Company;

That damages in the amount of \$660.00 for plaintiff together with costs of the proceeding, be and are hereby allowed complainants.

CHAS. E. WOLVERTON,  
District Judge.

Filed March 24, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 24th day of March, 1916, there was duly filed in said Court and cause, an opinion in words and figures as follows, to-wit:

### OPINION.

William R. Litzenberg, for Plaintiffs; Veazie, McCourt & Veazie, for Defendants; Wolverton, District Judge.

This case involves the validity, in the first place of a patent which was issued to Chandler, being numbered 1,140,875. The application was filed February 21, 1915, and the patent was issued May 25, 1915. The principal question that is presented in the case is whether the device in question was subject to patent. It is claimed on the one side that the discovery was not a matter of inventive faculty, and that it only comprised making a change, in order to effect the device desired, that only required the application of mechanical skill or judgment and choice.

We will first ascertain what is meant by the application of mechanical skill or of judgment and choice. That may be done better by illustration than in any other way.

If an ordinary mechanic is called upon to make a change for adaptation to some specific purpose, and if in the course of the application of his mind to his work the change is readily suggested, and would be suggested to any ordinary mechanic, or skilled mechanic even, then it would simply be the application of mechanical skill. You may take a rope, for instance, as an illustration, and it is desired to splice the rope. Any ordinary person of mechanical skill would say at once that the rope might be spliced by simply tying the ends of the rope together, and the splicing would be accomplished. Or you may take the illustration that was suggested this morning in the argument—the placing of weather-strips about a door or a window, to keep out the air or the wind. It does not require any inventive faculty to do that, because it would be suggested to the mind of a mechanic or a person skilled in his work that that would be a simple way of doing it, and it would be accomplished simply by applying the strips. And the same is true of the case involving the affixing of rubber flaps about an elevator to keep the warm air from getting into a cool room; and of the several illustrations that were given this morning. You may take the dredging enterprise, for instance, where the propeller was first affixed to the rear of the boat. It was ascertained that the working of the propeller would stir up the mud or debris from beneath, and that would be carried away by the stream.

The mere placing of the propeller in the front end of the boat instead of the rear was not an application of inventive faculty. It is a matter that would be suggested to the ordinary mechanic, or the person desirous of making a change in that way, to suit convenience. That would be the mere application of mechanical skill, or judgment and choice. Inventive faculty requires something in addition to this, something that would evolve from the mind, something new that would be useful when applied, and something that would not be suggested by the ordinary mechanic in the adaptation of his vocation.

Now, in the present instance, the question came up as to what would be necessary to obviate a difficulty that was found present. The industry of hauling logs of considerable length, it seems, has sprung up recently; that it is more in accordance with the desires of the parties in the industry to haul the logs of considerable length than to haul them in shorter lengths, as heretofore. When the parties entered upon the work, they found that a long log placed upon two trucks, where the trucks were far apart, would sag in the center, by reason of the weight of the logs themselves, and this sagging, it was found, brought the log down into contact with the draw-bar, the draw-bars being of the regulation height; or, if both draw-bars were of the same height, whether of the regulation height or not, it would have the same effect. And so the question came up how to obviate that difficulty. The condition was present that it was desirable to have a truck with a draw-bar of the standard height, so that the truck could be used in con-

nection with the ordinary flat-car, or any other car that is used in ordinary transportation, with the standard height of draw-bar; and that was another difficulty in the way.

Three ways were suggested of obviating the difficulty of the logs by sagging coming in contact with the draw-bar. One way was by raising the bunk. But it was found, I suppose in the course of reasoning, that raising the bunk would bring the center of gravity so high that it would interfere with the operation of the car, and might cause its derailment. Another suggestion arose as to whether the difficulty would not be obviated by shortening the bunk. That, it was said, would do it; yet, at the same time, there were some objections to a short bunk. Then came the suggestion that the lowering of the draw-bar at one end of the truck would solve the difficulty. But in order to obviate the difficulty by lowering the draw-bar at one end, it was found to be necessary to use two trucks in conjunction, one with the other. The draw-bar at one end of one truck being lowered, and the draw-bar at the other end of another truck, these two lowered draw-bars would act with each other; and on the opposite ends of the two trucks, the outer ends, would be the standard draw-bar, to be used with the standard flat-car or standard coach, etc.

So that it may be seen, from taking into consideration the difficulties presented, and all of them, that it required more than ordinary mechanical skill to work out the problem. Hence the idea was hit upon to lower

the draw-bar at one end of each truck, and that these draw-bars would co-operate, and the outer ends of the trucks as thus combined, having the standard draw-bar, would co-operate with the ordinary flat-car.

Now, the invention involved the reduction, after a consideration of all these ideas, to practical use, and that is exactly what Mr. Chandler has done in this case. He has lowered the draw-bar on one end of each truck and made two trucks co-operate together, and the draw-bars being thus lowered has completely obviated the difficulty presented.

I think, taking into consideration the whole of this, that that comprised inventive faculty; that it took something more than the ordinary skill of a workman to work out this design, and to so complete it that it would be useful and practical. And I am of the opinion that the patent issued was upon a patentable design, and therefore that the patent is valid, unless it has been anticipated by a prior patent.

Now, there have been three patents introduced here which were prior to this, and it is claimed that each of these patents has anticipated the patent in question. The first one, however, is not much relied upon in argument. The other two are considerably relied upon, but, without undertaking to analyze these patents, I am of the opinion that they do not anticipate the patent in question. They do not involve the use of two trucks and the lowering of a draw-bar at one end of each truck, so as to make the two trucks co-operate when not used for the actual hauling of the logs. They involve other



apparatus and other devices entirely, not involving the device in question or the improvement in question; and hence I think there was no anticipation.

The question has been argued here as to who first suggested this change in the apparatus which finally brought about the issuance of the patent. There is some question in the testimony as to whether the idea was first suggested by Mr. Chandler, or whether by Mr. Withrow. Mr. Withrow claims that he made the suggestion in the first place. Mr. Chandler thinks that he was the first one to suggest it, or that the idea came to him first. Mr. Chandler is corroborated by the testimony of Mr. Van Cleve very pointedly. But, taking into consideration the testimony that Mr. Chandler entered at once upon the completion of his design, so as to put it into proper arrangement for use, and that Mr. Withrow allowed the matter to rest and made no effort toward a completed design for useful purpose, and taking into consideration also the other testimony in the case, that, after Mr. Chandler had perfected his design, constructed a car, and supplied one of those cars to the defendant company, then the Seattle Company, seeing that design, offered to make a car of the same design and to sell it to the defendant company, I think the question resolves itself very satisfactorily in favor of Mr. Chandler's being the originator of the idea, to say nothing of the matter of reducing it to practice.

That leaves only one other question, which is touching the damages in this case. I have some doubt as to how to resolve that question. The measure of damages

seems to be the amount of loss a person has sustained by the use of his design by another person.

“Plaintiff is entitled to a verdict only for the actual damages sustained by him because of and during the time of the infringement for which the suit was brought, and not to exemplary damages. Damages are to be measured by the actual loss to plaintiff, which must be shown. It may be shown by any means which will best establish the loss.” 30 Cyc. 1020.

“The verdict at law must be for the actual damages, but the court may in its discretion enter judgment thereon for any sum above the verdict not exceeding three times the amount of the verdict. Damages may be increased to recompense plaintiff, where the circumstances of the infringement are aggravated and the litigation expensive.” 30 Cyc. 1023.

“In equity the complainant may recover the amount of the gains and profits that defendant has made from the use of the invention, and in addition may have the damages sustained by him assessed.” 30 Cyc. 1024.

Now, in this case, while plaintiff had practically completed a contract with the defendant company for the sale of 40 sets of these trucks, at a price of \$700 each, yet before the contract was entered upon in the way of furnishing the trucks, or even in the way of building them, Mr. Kerry called up Chandler to talk with him, and not getting him on the 'phone, he left word, and the next day came to see Chandler in Portland. The matter was then talked over, and finally an adjustment came about whereby Chandler was to furnish 20

sets of the trucks and allow the Seattle Company to furnish 20.

Chandler has testified that it cost him to build those truck and to furnish then \$614, leaving a profit really of \$11 on each set of trucks. I am disinclined to allow the difference between the contract price first made, that is \$700, and the amount which he finally received for the trucks as the correct measure of damages in this case. The damages must be proven by the plaintiff, as indicated by this authority, or he cannot recover. He has shown, however, that he has lost \$11 on each of the 20 sets of trucks that were furnished by the Seattle Company. That would make a total of \$220, and, under the conditions that here prevail, I think that the court ought to allow a trebling of that amount, in the discretion of the court. I read again from 30 Cyc. 1023:

“The verdict at law must be for the actual damages, but the court may in its discretion enter judgment thereon for any sum above the verdict not exceeding three times the amount of the verdict.”

In this case I think the facts warrant and justify the court in assessing three times the amount of the actual damages which the plaintiff seems to have sustained. That will be \$660 for the plaintiff. And of course the judgment will carry the costs of the proceeding in favor of the plaintiff.

The decree will be entered accordingly.



And afterwards, to-wit, on the 26th day of April, 1916, there was duly filed in said Court and cause, a petition for appeal, in words and figures as follows, to-wit:

### PETITION FOR APPEAL.

The defendants herein, the Columbia and Nehalem River Railroad, a corporation, and A. S. Kerry, feeling themselves aggrieved by the decree made by said Court on the 24th day of March, 1916, whereby it was adjudged and decreed that United States Patent No. 1,140,875, issued to Elbert G. Chandler May 25, 1915, for logging trucks is for a patentable subject matter and is valid, and that said patent is infringed in the logging trucks purchased by the defendants in this cause from the Seattle Car and Foundry Company and now being used by said defendants, and that said defendants and each of them, their agents and representatives, be enjoined from any further construction or sale or use in any manner of said patented invention in logging trucks, including the further use of the twenty sets so purchased from said Seattle Car and Foundry Company, and that damages in the amount of \$660.00 for plaintiffs, together with the costs of the proceeding, be allowed complainants, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree and judgment, and each and every part thereof, and they pray that this their petition for such appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to

the said United States Circuit Court of Appeals for the Ninth Circuit.

And the defendants further pray that their bond upon appeal and for a supersedeas, which is in the sum of five thousand dollars (\$5000), with the National Surety Company of New York as surety, which is tendered herewith, be approved, and that all further proceedings upon said judgment and decree and that the said injunction be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

VEAZIE, McCOURT & VEAZIE,  
J. C. VEAZIE,

Attorneys for said Defendants.

Filed April 26, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 26th day of April, 1916, there was duly filed in said Court and cause, an assignment of errors in words and figures as follows, to-wit:

#### ASSIGNMENT OF ERRORS.

Come now the defendants and file the following assignments of error, upon which they and each of them will rely upon their appeal from the decree made by this Honorable Court on the 24th day of March, 1916:

1. That the United States District Court for the District of Oregon erred in holding that the letters

patent of the United States, granted on May 25, 1915, to the plaintiff, Elbert G. Chandler, being patent No. 1,140,875, and being the letters patent sued on herein, are good and valid in law.

2. The said Court erred in holding that the pretended improvements claimed in and by the said patent or any of them were inventions when produced by the said Elbert G. Chandler.

3. The said Court erred in holding that any of the pretended improvements claimed in or covered by the said patent was possessed of patentable novelty or included, or involved, or showed any patentable novelty or invention.

4. The said Court erred in failing to find and hold that the pretended improvements embraced in and claimed under the said patent were anticipated by the several patents set forth in the answer of the defendants and offered in evidence at the trial of this cause.

5. The said Court erred in failing to find and hold that the said pretended improvements consisted wholly of ideas, expedients and adaptations which were well and commonly known and in general public use in numerous cars, or trucks and other devices for many years prior to the alleged invention represented by the said patent.

6. The said Court erred in holding that the said Elbert G. Chandler was the original and first inventor of the alleged improvements described in said patent.

7. The said Court erred in holding that said patent is infringed by the logging trucks purchased by the defendants from the Seattle Car and Foundry Company and which are being used by the defendants.

8. The Court erred in holding and decreeing that the defendants and each of them and their agents and representatives be enjoined from any further construction, sale or use in any manner of logging trucks having the draw-head at standard height and the other draw-head substantially below standard height, and in holding and decreeing that the defendants be enjoined from the further use of the twenty sets of logging trucks so purchased from the Seattle Car and Foundry Company.

9. The said Court erred in awarding plaintiffs damages in the amount of six hundred and sixty dollars (\$660) or in any sum or the costs of the proceeding.

10. The said Court erred in failing to decree that the complaint of the plaintiffs be dismissed and in failing to award defendants judgment for their costs and disbursements.

**VEAZIE, McCOURT & VEAZIE,  
J. C. VEAZIE,**

*Attorneys for Defendants.*

Filed April 26, 1916.

**G. H. MARSH, Clerk.**

And afterwards, to-wit, on the 26th day of April, 1916, there was duly filed in said Court and cause, a bond on appeal, in words and figures as follows, to-wit:

### BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, That we, the said Columbia and Nehalem River Railroad, a corporation organized under the laws of the State of Oregon, and having its principal office at Portland, Oregon, and A. S. Kerry, of Kerry, Oregon, as principals, and the National Surety Company, a corporation organized under the laws of New York, and having its principal office in the City of New York, as surety, are held and firmly bound unto the above named Elbert G. Chandler and Northwestern Equipment Company in the sum of five thousand dollars (\$5000) to be paid to the said Elbert G. Chandler and Northwestern Equipment Company, and for the payment of which well and truly to be made we bind ourselves and each of us, and our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of April, 1916.

The condition of this obligation is such that WHEREAS the above named Columbia and Nehalem River Railroad and A. S. Kerry have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment for damages and costs and the decree for an injunction granted

in the above entitled suit, in the District Court of the United States for the District of Oregon, in equity, on the 24th day of March, 1916:

NOW THEREFORE THE CONDITION of this obligation is such that if the above named Columbia and Nehalem River Railroad and A. S. Kerry shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make such appeal good, and shall pay all damages and profits which may result from any further construction, sale or use in any manner of the alleged patented invention described and referred to in the said decree, the construction, sale and use of which are by the said injunction enjoined from and after the date hereof until the final decision of the Circuit Court of Appeals herein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

IN TESTIMONY WHEREOF, the said principals and surety have caused these presents to be executed by their duly authorized representatives this 24th day of April, 1916.

COLUMBIA AND NEHALEM RIVER RAILROAD

By J. C. VEAZIE,  
Secretary.

A. S. KERRY,  
By J. C. VEAZIE,  
His Attorney.



(Seal, Columbia & Nehalem  
River Railroad.)

NATIONAL SURETY COMPANY  
By GEO. W. ALLEN,  
Resident Vice President.  
  
ROBERT WHYTE,  
Resident Assistant Secretary.

(Seal, National Surety Co.)

The foregoing bond is hereby approved to operate  
as a supersedeas to said judgment and injunction.

CHAS. E. WOLVERTON,  
District Judge.

Countersigned at Portland, Ore. April 25, 1916.

NATIONAL SURETY COMPANY,  
By MARC HUBBERT,  
Resident Agent.

Filed April 26, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Wednesday, the 26th day  
of April, 1916, the same being the 45th Judicial  
day of the regular March, 1916, term of said Court;  
Present: the Honorable Charles E. Wolverton,  
United States District Judge presiding, the fol-  
lowing proceedings were had in said cause, to-wit:

ORDER ALLOWING APPEAL AND ORDER  
STAYING EXECUTION.

At this time came the Columbia and Nehalem River  
Railroad, a corporation, and A. S. Kerry, the above

named defendants, and presented their petition for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and assignments of error accompanying the same, and upon consideration of the said petition, the Court hereby allows such appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause. And the said defendants now presenting and filing their bond upon an appeal and for a supersedeas, in the sum of five thousand dollars (\$5000), with the National Surety Company of New York as surety, the said bond is hereby approved, and

IT IS ORDERED that the operation and effect of the judgment and decree heretofore entered in this cause, including the injunction order therein contained, be, and the same are hereby, stayed and suspended until said appeal is heard and decided by said Circuit Court of Appeals.

Dated this 26th day of April, 1916.

CHAS. E. WOLVERTON,  
District Judge.

Filed April 26, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 9th day of October, 1916, there was duly filed in said Court and cause, a statement of the evidence in words and figures as follows, to-wit:

*Testimony of Elbert G. Chandler.*

STATEMENT OF THE EVIDENCE.

Elbert G. Chandler being called as a witness on behalf of the plaintiffs, and duly sworn, testified as follows:

I am Manager of the Northwestern Equipment Company; am a mechanical engineer; I am the patentee named in the United States patent No. 1,140,875; that is my invention and I am the owner of the invention and of the letters patent.

The said patent was then offered and received in evidence without objection, and marked "Complainants' Exhibit 1," and is as follows:

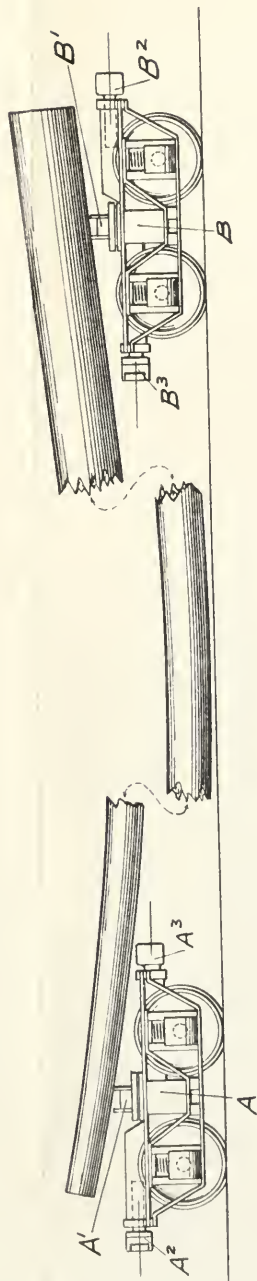


**PLAINTIFF'S EXHIBIT "1"**

E. G. CHANDLER.  
LOGGING TRUCK.  
APPLICATION FILED FEB. 25, 1915.

1,140,875.

Patented May 25, 1915.



Witnesses:

*H. Strong*  
*J. M. Griffin*

*Robert G. Chandler*  
Inventor,

By *A. H. Fitzgenberg* Att'y.



# UNITED STATES PATENT OFFICE.

ELBERT G. CHANDLER, OF PORTLAND, OREGON.

## LOGGING-TRUCK.

1,140,875.

Specification of Letters Patent.

Patented May 25, 1915.

Application filed February 25, 1915. Serial No. 10,571.

*To all whom it may concern:*

Be it known that I, ELBERT G. CHANDLER, a citizen of the United States, residing in the city of Portland, county of Multnomah, and State of Oregon, have invented certain new and useful Improvements in Logging-Trucks, of which the following is a specification.

My invention relates to logging trucks, such as are used in pairs for hauling long logs, one truck being placed under each end of the log. It is quite common for these logs to be as much as ninety feet long, and because of their length, and the distance between the trucks, which must necessarily be placed near the ends of the logs, said logs sag in the middle sometimes low enough to almost engage the track. Because of this sagging, the logs frequently engage and rest upon the inner ends of the truck frame, and the draw-bar thereof, and thus operate to prevent the trucks from turning under the log-bunk thereupon, which frequently results in the derailment of a truck.

The object of my invention is to provide such an improvement in logging trucks, which are used in pairs at the opposite ends of long logs, that no matter how much the logs sag between the trucks, they will not engage the truck frame, nor the draw-bar thereof. I accomplish this by constructing the trucks so that the draw-bars at the outer ends thereof are at standard height, and are adapted to be coupled to the draw-bars on standard railroad equipment, while the draw-bars on their inner, or adjacent, ends are positioned considerably lower than are the outer draw-bars, thus giving clearance for a log resting upon the car-bunks, to sag to the limit without interfering with the inner ends of the trucks or the inner draw-bars.

When returning the logging trucks empty, they are, of course, readily coupled together at their inner ends, because at their inner or adjacent ends, the draw-bars, while lower than the standard draw-bars, are of substantially the same height and can be coupled together, while the draw-bars at their outer ends are standard height.

In order that others may thoroughly understand my invention, I have shown in the accompanying sheet of drawings, one practical embodiment of the invention, which I will now describe.

In the drawings, I have shown in side ele-

vation a pair of logging trucks with a long log supported thereon at its opposite ends, with two portions thereof broken out, to reduce the length of the figure, but showing the middle portion in substantially the position it would occupy, sagging almost to the track, as is common where these very long logs are thus supported.

In the drawings one truck is designated A, and the other truck is designated B. Each is provided with a log-bunk, as A<sup>1</sup> and B<sup>1</sup>, adapted to turn upon the truck in the usual manner, and upon which the opposite ends of the log rest, substantially in the manner indicated. Each truck is provided at its outer end with a draw-bar, as A<sup>2</sup> and B<sup>2</sup>, of standard height so as to be coupled into a regular train, and each is also provided on its inner end with a draw-bar, as A<sup>3</sup> and B<sup>3</sup>, positioned considerably lower than the outer draw-bars, but adapted to be coupled together when the trucks of each pair are brought together to be returned empty.

So far as I am aware, I am the first to provide a pair of logging trucks having their draw-bars at their outer ends at standard height, and having their inner ends constructed low to give clearance for the sagging of the logs placed thereupon, with their inner draw-bars also below standard, to avoid interference with the sagging log, and thus to avoid the serious objection of the logs engaging and resting upon the inner ends of these logging bunks, and the inner draw-bars, and interfering with their following the track upon which they are to run.

What I claim and desire to secure by Letters Patent is,—

1. A pair of logging trucks having at their outer ends draw-bars at standard height, and having at their inner ends, draw-bars arranged below standard height, whereby to give clearance for sagging logs thereon, and at the same time being adapted to be coupled to each other, when said trucks are brought together.

2. A logging truck having a log supporting bunk thereupon, and provided at one end with coupling means at substantially standard height, and at its other end with coupling means considerably below standard height, substantially as and for the purpose indicated.

3. In combination two logging trucks,

each provided with log supporting means, and each having at its outer ends coupling means positioned at substantially standard height, whereby to be coupled to standard  
5 equipment, and each having at its inner end coupling means positioned below standard height, whereby to give clearance, and adapted to be coupled together.

10 4. A logging truck having a log bunk pivotally mounted thereupon, a draw-bar at one end mounted at standard height, and adapted to be coupled to standard railroad

equipment, and a draw-bar at the opposite end of said truck below the top of the frame thereof, and below standard height, to give  
15 clearance forwardly of the log bunk, substantially as, and for the purpose described.

Signed at Portland, Multnomah county, Oregon, this 19th day of February, 1915.

ELBERT G. CHANDLER.

In presence of—

HERMAN MOELLER,

I. M. GRIFFIN.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents  
Washington, D. C."

*Testimony of Elbert G. Chandler.*

The witness proceeded and testified as follows:

I am engaged in the manufacture and sale of this invention; we build logging trucks of all kinds and they are built by the shops and are sold through the Northwestern Equipment Company of which I am an officer and director and one of the stockholders; the Northwestern Equipment Company has a license from me for handling the sales; it is an oral license; as an officer and director and one of the principal stockholders, I am simply doing business through the Northwestern Equipment Company in selling this invention; I think it was in the Fall of 1913 that Clark and Wilson asked us and the Seattle Car Company and the Russell Car and Foundry Company to send them two sets of trial trucks, it being their idea to try out these three types and decide which was best for their use; we and the other two concerns sent sample trucks, and Mr. Van Cleve, who was then our salesman called on the Clark and Wilson Company several times during the winter to watch the operation of our trucks and see that any small difficulties that might be encountered were taken care of. After one of his visits to Clark and Wilson camp he stated that Mr. Withrow had complained about all of the trucks giving trouble from the logs bellying down and hitting the inside draw-bar, and that if they bought any more trucks they would want a truck that would take care of this difficulty; we studied the matter over to a considerable extent; there were several ways in which the matter could be taken care of, but most

*Testimony of Elbert G. Chandler.*

of them had some objection, either to the Interstate Commerce rules for common carriers, or some other objection, and all of them were discarded; we finally decided that the construction of the truck would permit us to use the idea of a high-low draw-bar, that is a draw-bar of standard height on the outside to connect with the standard equipment which was already on the road, and we hit on the idea of lowering the other draw-bar to a considerable extent below that point to take care of any bellying down that the logs might have during the transportation; there were some difficulties that we ran up against in the construction, but these were mechanical difficulties that we finally overcame. The next time Mr. VanCleve called upon Clark and Wilson he told them that we would in the future be prepared to furnish them with trucks having a draw-bar of standard height on one end and a draw-bar of considerable lower height on the other side; Mr. VanCleve stated that Clark and Wilson told him that if we could build them cars with a high-low draw-bar, that was the kind of truck they would want; that Mr. Withrow, or any one connected with Clark and Wilson, did not suggest to me the idea of a high draw-bar at one end of a logging truck and a low draw-bar at the other end. I worked that idea out after Mr. VanCleve reported the objections made by Mr. Withrow; it took time and study to work this idea out and embody it in a practical logging truck; we were working on the idea some two or three months; that in the past there had been logging trucks built with draw-bars having a standard height of  $34\frac{1}{2}$  inches above



*Testimony of Elbert G. Chandler.*

the top of the rail and logging trucks with draw-bars having a lower height at both ends, the draw-bars on either end being at the same height but in different cases this height varied, being sometimes 26 inches and sometimes  $34\frac{1}{2}$ , and sometimes between those heights to suit the individual requirements of the particular case, but in no case did the logging truck have a coupler at one end at a considerable distance above that on the other; the draw-bars were in alignment so that the line of draft was direct; in the past they have taken care of the difficulty of these sagging logs in some cases by using a very low draw-bar on either end of the truck and using a goose-neck to connect it with the higher draw-bars on the standard equipment, the logging trucks having low draw-bars on both ends; in some cases the height of the bunk has been raised far enough above the draw-bars to give clearance while the logs were being transported; that in November, 1914, I think it was, Mr. Kerry wrote us a letter stating that in the early part of 1915 he would be in the market for forty sets of logging trucks, and that he was asking the Seattle Car Company and the Russell Car and Foundry Company, as well as ourselves, to send down a sample truck which he could use and decide which truck was best for his service, and on receipt of his letter I wrote him and asked him if he would allow us to send him a new type of truck which we had developed having a high draw-bar on one end and a low draw-bar on the other, and we set forth in this letter the advantages this type of construction had; this was around the latter part of

*Testimony of Elbert G. Chandler.*

November; Mr. Kerry answered that he would be glad to have us send this truck, and that with the long logs which he was going to handle the trucks would certainly need all the clearance that we could give them; we sent down a set of sample trucks having this idea of the high-low draw-bar embodied in it; the other companies sent sample trucks having draw-bars of standard height, 34½ inches on either end, and all three trucks were put into service; after Mr. Kerry had tried out the trucks I went down there one day, and he gave me an order for forty sets, and five days after that he came to town and stated that representatives of the Seattle Car Company had been down to his place and made him a considerable lower price and offered to build him the identical truck of which we had sent down sample, and that as they were willing to build this truck at a lower price than we had taken the order for he felt at liberty to cancel the order, and that he would allow us to furnish twenty sets of the trucks at the same price quoted by the Seattle Car Company, and if we didn't want to do this he would have to give them the entire order.

Thereupon, in response to questions by the Court, the attorney for the defendants stated defendants were using trucks built by the Seattle Car and Foundry Company having one draw-bar of standard height and another below standard height.

The witness proceeded and testified as follows:

We filled part of the order furnishing twenty pairs of trucks; the price we gave Mr. Kerry on the original



*Testimony of Elbert G. Chandler.*

order of forty trucks was \$700 per set, and the price we were compelled to take on the twenty sets was \$625 a set, being a reduction of \$75; the twenty sets that we furnished cost us \$614 a set; I have seen the trucks furnished to the defendants by the Seattle Company, and they are similar to our truck, having high draw-bar and the low draw-bar. At the time Mr. Kerry informed me that he would have to place his order with the Seattle Company, I notified him verbally that this was my invention and afterwards notified him by letter and he told me that he had secured a guaranty from the Seattle Car and Foundry Company against loss through infringement on our truck or any other; the other companies did not furnish sample trucks with the high and low draw-bars, but furnished standard trucks, that is, with standard draw-bars at both ends; Mr. Kerry did not suggest this idea to me, nor did any one else; I worked that out as a solution of difficulties which had been reported by our salesman; after getting the order from Mr. Kerry, and before receiving the notice of cancellation, we had ordered such parts as we did not already have in stock to fill the order for forty sets of trucks; Mr. Kerry knew that I had applied for a patent; I notified him before we had received the patent that we had applied for one, and also after the patent was issued; I notified him after receiving the formal notice of allowance of the application.

Thereupon plaintiffs offered in evidence a letter from Mr. Kerry, dated November 14, 1914, addressed

*Testimony of Elbert G. Chandler.*

to the Northwestern Equipment Company, and the same was received without objection, marked "Complainants' Exhibit 2," and is as follows:

"Clatskanie, Ore., Nov. 14, 1914.

Northwestern Equipment Co.,  
Portland, Ore.

Gentlemen:

Some time in February, 1915, we will be in need of 40 sets of disconnected 100,000 capacity standard height logging trucks. We are asking the Seattle Car and Foundry Co., The Russell Car & Foundry Co. and yourselves to furnish one set of these trucks, each naming a price delivered at Kerry, Ore., on the S. P. & S. We will buy one set of trucks but may not pay for them until we place the order for the balance. You may ship us one set whenever you have them ready.

Yours truly,

Columbia & Nehalem River R. R.,

By A. S. Kerry, President."

Plaintiffs then offered in evidence a letter dated November 17, 1914, from the Northwestern Equipment Company to A. S. Kerry, and the same was received in evidence without objection, marked "Complainants' Exhibit 3," and is as follows:

*Testimony of Elbert G. Chandler.*

"Nov. 17, 1914.

Mr. A. S. Kerry, President,

Logging Trucks.

Columbia & Nehalem River R. R. Co.,  
Westport, Oregon.

Dear Sir:

We duly received your favor of November 14, and are glad to know that you are going to buy 40 sets of trucks.

We note that you want the draw-bar to be of standard height, that is,  $34\frac{1}{2}$  inches from top of rail to center of draw-bar. In this connection, would say that Clark & Wilson found that where they used the standard height coupler on their trucks and hauled very long logs the logs bellied down and interfered with the inside coupler, and they told us that if they ordered any more trucks they would want us to furnish them a truck having the outside couplers of standard height and the inside couplers 10 inches lower. I am making a sketch to explain more fully the point that I am trying to bring out, and if after thinking this over you decide that you would like to have us send you a set of trucks in which the couplers are of different heights, we would be glad to do it.

As long as you are getting three different types of truck, it might be a good idea to embody as many ideas as you could in the three sets and then make up your

*Testimony of Elbert G. Chandler.*

own design from the three and let everybody bid on them, as all of the manufacturers can build any type of truck which you desire.

We have always found that the arch bar truck, while a little more expensive, is easier to repair in case of wrecks and does the work considerably better than a cast steel frame. At the same time, if you want a cast steel frame, there is no reason why we could not furnish it, and we would be glad to send you both an arch bar and a cast steel frame truck, if you so desire. Probably, however, you want to get as few odd trucks as possible, and as the other people will undoubtedly send you a cast steel frame truck you may not want us to do the same. Unless we hear from you to the contrary, we will therefore simply furnish you with an arch bar truck having outside couplers standard height and inside couplers 10 inches lower. It is the writer's opinion that as far as trucks go the bunk is the solution to the whole problem, and whoever gives you the best bunk gives you the best car.

If you care to do so, the writer would be glad to meet you at Rainier, look over the Hammond Lumber Co.'s trucks at that point and take advantage of any suggestions they may have to offer; then go down to Clark and Wilson's camp and get any suggestions which they have to offer on the three or four different types of trucks which they have; and then build you a sample car to correspond. We are very anxious to secure your order and we want to spend enough time on the subject

*Testimony of Elbert G. Chandler.*

to give you exactly the truck which you need for your service.

Awaiting your early advices on this matter, we remain.

Yours very truly,  
NORTHWESTERN EQUIPMENT CO.  
By.....”

Plaintiff then offered in evidence the reply to this letter dated November 21, 1914, which was received without objection, marked “Complainants’ Exhibit 4,” and is as follows:

“Clatskanie, Ore., Nov. 21st, 1914.

Northwestern Equipment Co.,  
Portland, Ore.

Gentlemen:

Answering your favor of recent date in regard to logging truck. You are no doubt right about the inside draw-head. All of our disconnected cars will be used for hauling long stuff and would be a failure if the log got on the draw-head. We have asked the others to figure on automatic couplers which are to be provided with slot with link and pin.

Yours truly,  
COLUMBIA & NEHALEM RIVER R. R.,  
Per A. S. Kerry, Pres.”

*Testimony of Elbert G. Chandler.*

On cross examination the witness testified as follows:

I hit upon the idea somewhere during the early spring of 1914; I can not tell the exact date; the idea of using the high draw-bar on one end and the low draw-bar on the other; I can not give the exact date; I would not say it was some months after Mr. Withrow made this complaint to Mr. VanCleve; we were working on the idea, or on a solution for that, some thirty or forty days, I should say; I don't know that I could tell how long it was after Mr. Withrow made the complaint before I communicated my solution to him; it was during one of Mr. VanCleve's visits at their camp; he stated what we had worked out on it to Mr. Withrow; I first conceived the idea that this was a patentable invention at that time; I made my application in February, 1915; in the meantime, I had not, to my knowledge, informed any one that I claimed this idea as my own exclusive idea; I didn't talk with Mr. Withrow myself; the idea of patenting this invention was first conceived by me in 1914, and the first step towards patenting it was taken after the first truck had been built and put into service at Mr. Kerry's camp; I can not tell the exact date; I don't know whether I made the application for patent before or after Mr. Kerry gave the order for the forty trucks; it was about that time; I first informed Mr. Kerry verbally that I claimed a patent on this idea at the time he cancelled the order, and stated that the Seattle Car Company were going



*Testimony of Elbert G. Chandler.*

to furnish him the exact type of truck; I do not claim there is any novelty in the idea of having one end of the frame of a truck or of a car higher than the other; I have never seen a logging truck having a frame on one end higher than the other; when these logging trucks were loaded and working in pairs I would say that the logs served as the body of the car if you want to call the two sets or the two trucks a car; when two sets of logging trucks are loaded the logs perform the same service with reference to the trucks in joining them together that the body of an ordinary car performs for the two sets of trucks under the car; when the trucks are not loaded each truck is handled as an independent car and ordinarily has couplers at both ends; there is a running board on most of the trucks which you could call a platform; you might call it a car, but the ordinary conception of a flat car would be a car having a platform fully decked over, and these are not fully decked over; I have never seen a logging truck with platforms fully decked over; I have never seen a car truck having a frame; the ordinary car truck has no end frame; it is entirely different than a logging truck in that respect; I have not seen one having the side frames at one end higher than those at the other with the exception of certain trucks used on street cars; I have noticed the Brill trucks on the street cars that pass in front of this building; they use a smaller wheel on one end of the truck than they do on the other and the connecting frame is naturally lower on that end.

*Testimony of Elbert G. Chandler.*

The witness was then asked the following questions and gave the following answers thereto:

Q. That, then, is an old and common device, is it not; to lower the frame of the car at one end lower than the other, so as to meet different requirements the situation presents?

A. Well, this case that you have just brought up is not a car, but a truck, as I understand.

Q. That is a truck, yes.

A. The end or the frame of the car you cannot compare. I could not draw a comparison between a street-car truck of that type and the ordinary flat-car.

The witness proceeded and testified as follows:

I don't recall any other kind of car trucks in common use having one end of the frame of the truck higher than the other, but would not say that there are none; there is no novelty in having both ends of a logging truck lower than standard equipment, and I was aware of that fact when I made application for this patent; I knew at that time that it was a very common practice to have a logging truck with both ends below standard height; when this complaint was made to me by Mr. Withrow several means suggested themselves to me for overcoming the difficulty; an offset link or goose-neck could be used in connection with a truck having extremely low draw-bars on either end, and the goose-neck offset sufficiently to couple the lower draw-bars of the truck to the higher draw-bars of standard equip-

*Testimony of Elbert G. Chandler.*

ment; that is something in common use, but on certain roads which are common carriers it is prohibited by Interstate Commerce rules; another idea would be to raise the bunk, bolster it up to a position that would give plenty of clearance for even a standard height draw-bar, but this has a number of objections; it would raise the center of gravity too high; structurally it has some other objections, but the main objection is getting your center of gravity too high; the only other solution that we hit upon was this method of the high and low draw-bar; in a way the whole question of dealing with these long logs is one of relative height between the bunk and the inner draw-bar; that is the sole question leaving aside difficulties of construction; the primary difficulty is to provide a sufficient difference in height between the top of the bunk and the draw-bar; if the purchaser wants a car with a low truck the difficulty can be solved by simply putting a high bunk on a low car and then using this goose-neck connection to the front car or the engine; that would be a satisfactory solution in such a case; a high bunk could be used on a high car, but there would be structural difficulties and the question of the center of gravity; Mr. Kerry has a standard road on which he uses standard equipment and standard coupling devices so I knew he had to have draw-bars coupling cars together at standard height and could not use the low cars; I don't know whether he could have used the low trucks or not; it depends somewhat on the charter he is working under; I was attempting to evolve a car which could be used by a road under the

*Testimony of Elbert G. Chandler.*

Interstate Commerce Act, a car which would allow a common carrier to use cars of both types having a standard height and connecting them with an automatic coupler; the difference between the height of the inner and outer draw-bars of these logging trucks which we constructed is about ten to twelve inches; I didn't specify the extent of that difference in my claims for a patent; I think the patent covers any difference there may be between high and low draw-bars; before I invented this car the only device I know of for coupling low logging trucks to standard equipment was the goose-neck; I have seen logging engines having at the rear end a pocket casting with slots at different heights so that it can accommodate the coupling of cars of several different heights, but that casting, so far as I know, is always used in connection with a link and pin coupler or goose-neck; at the time I received this suggestion or complaint from Mr. Withrow we made some sketches for this type of car at the office; I don't know whether we have those or not; they were rather of a rough nature; we did not work out the mechanical details at that time; we applied the idea in a working car at the time we sent the sample car down to Mr. Kerry; that was the first car that was sent out, and that is the first time I ever really worked the idea out into practical form; the idea came to us at an earlier date than that, but it was never worked out in a working model for the reasons that there are only a few roads upon which this device would be of advantage; the idea had never been put into actual use until I furnished this sample

*Deposition of J. R. Van Cleve.*

car to Mr. Kerry; I furnished this sample truck to him either the latter part of 1914 or the first part of 1915, I can not give the exact date.

Upon re-direct examination the witness testified as follows:

In a logging truck the draw-bars are an integral part of the truck itself, while, in a street car the draw-bars are an integral part of the body; if you drew a comparison between the two the draw-bars on the logging truck, to make it analogous, would have to be attached to the load, the log itself; in street-cars, flat-cars, freight-cars and passenger-cars the draw-bar mechanism is attached to the body of the car and not to the truck; as they are ordinarily built there is no coupler or draw-bar on the inner ends of the trucks; there are no couplers for coupling the trucks together; there is no occasion for it; one of the objects in having couplers on these logging trucks is so that when the trucks are returned empty they are brought together and coupled by means of the low draw-bars, just the same as two cars are coupled together; they can be coupled and disconnected.

Plaintiffs then read in evidence the deposition of J. R. VanCleve as follows:

I am fifty-four years of age, live at Elko, Nevada, and at the present time am master mechanic for the Western Pacific Railway; I was employed by the Northwestern Equipment Company of Portland, Oregon, as salesman from January 1st, 1913, to about December



*Deposition of J. R. Van Cleve.*

1st, 1914; I called on the Clark & Wilson Lumber Company several times. "The chief object of these calls was to watch the service given by two sets of our logging trucks which the Clark & Wilson Lumber Company had purchased and was using. I talked with Ira Withrow. Until their purchase of our trial sets of logging trucks as well as two or more sets of other manufacture, they had been handling their logs entirely on flat cars with couplers of the Master Car Builders standard height, this made it necessary to give them a logging truck with a coupler of Master Car Builders height, so the logging trucks could be used in connection with the flat cars. The Master Car Builders standard height of couplers is in the neighborhood of a foot as near as I can recall higher than the coupler of the ordinary logging truck. The Clark & Wilson Company was at this time making the practice of getting out and moving their logs in full tree lengths, and Mr. Withrow explained to me that these very long logs on account of their sagging down of their own weight, between the trucks which were placed under either end of the log, were giving trouble striking the inside coupler. It was my practice to report any such troubles or difficulties to our Manager, Mr. Elbert G. Chandler." "I reported to Mr. Elbert G. Chandler that the inside couplers of the Clark & Wilson Lumber Company's logging trucks were giving trouble by striking the long logs they were handling on account of these logs sagging down between the trucks." "Mr. Chandler solved the troubles which I reported to him the Clark & Wil-



*Testimony of Ira L. Withrow.*

son Lumber Company was having with the high couplers on our logging trucks." On one of my trips I advised Mr. Withrow, the representative of the Clark & Wilson Lumber Company that I had reported this trouble to Mr. Chandler, and he had developed a truck with one high and one low coupler which would entirely do away with this trouble. His reply to this information, as near as I can recall was, "If you people can furnish that kind of a logging truck, that is the kind we want."

The plaintiff then rested.

Ira L. Withrow being called as a witness on behalf of defendants and duly sworn testified as follows:

I reside at Goble, Oregon, and am Superintendent of the Columbia Timber Company, and held the same position in the Fall of 1913 and during the year 1914; that is the same as the Clark & Wilson Company, Clark & Wilson owned the Columbia Timber Company; they were operating down at Goble in 1913 and 1914; I remember the occasion when the Northwestern Equipment Company, and certain other companies, furnished Clark & Wilson some sample logging trucks along about the Fall of 1913; I think they came about November, 1913; we have some of them in use yet, having purchased some of them: the trial of these trucks lasted until along in 1914, early in the Spring; we were hauling long logs at that time and we experienced difficulty by reason of the interference of these long logs with

*Testimony of Ira L. Withrow.*

the inner draw-bars of these trucks; these sample trucks had draw-bars of standard height, 34½ inches above the rail and both draw-bars of each truck were of the same height; the difficulty we experienced was that these long logs were sagging down in the middle so they would strike the draw-bar and we had trouble making them take the curves, etc.; I had a conversation with Mr. VanCleve, the salesman of the Northwestern Equipment Company regarding that question; he was there one day and we were having trouble with the trucks, and I told him he would have to do something and that the proper way to do would be to drop the draw-bars, and he said that as we had the standard coupler flat-cars on the outside—he looked it over and thought it would be a good idea. At first he thought it would not do because if we set out one of them we would have to set out the pair; I explained to him that this made no difference as they all had to go in pairs any way; he said he thought that would be a good idea; this was in the early part of 1914, sometime in the Spring; I would not say just when; it was during one of his trips down there; it is not true that I complained to Mr. VanCleve without suggesting any remedy or that Mr. VanCleve came and told me about this idea after reporting to Mr. Chandler and having him study the question; I told Mr. VanCleve.

Upon cross-examination the witness testified as follows:

*Testimony of Ira L. Withrow.*

I suggested this idea to Mr. VanCleve—this idea of the high and low draw-bar; I thought it was a practical construction; I suggested the same thing to Mr. Vachon of the Seattle Car Company; I never made any sketches of it; I just told him it could be done; we were looking at the trucks one day there—there was no way decided on how it should be done; I am quite positive that that idea came from me, and I suggested it to Mr. VanCleve; I suggested to Mr. VanCleve the difficulty that was being experienced and also that the draw-bar should be dropped; we said that we wouldn't buy any more unless this was done; that we would order no more trucks without the inside draw-bar being lowered; we never bought any after that; we had these ordered at the time this came up with the standard draw-bar at both ends; the cars were delivered probably three or four months after that, but we didn't have this idea embodied in them because they were ordered before this question came up; they were ordered from the Seattle people with the standard draw-bar at each end; we never wrote them to see whether it would be possible for them to change; we never had any logging trucks with draw-bars arranged one high and one low; we never have ordered any trucks since that time; the Seattle trucks which were furnished us had the standard draw-bar at both ends; I talked about this idea with Mr. Vachon of the Seattle Car and Foundry Company one day during his visits down there; it was sometime last Summer that I first learned that the Northwestern Equipment Company was furnishing logging trucks with high and low

*Testimony of Ira L. Withrow.*

draw-bars; I think it was Mr. Clark who called it to my attention; we never ordered any trucks from the Northwestern Equipment Company except the two sets we got on trial there; the suggestion that these trucks could be made with high and low draw-bars was made when Mr. VanCleve and I were talking about it that day; I do not remember that Mr. VanCleve called on me afterwards and told me that they were in a position to furnish us trucks having high and low draw-bars; he called on us quite frequently at first to see how the trucks worked; we had his trucks against the Seattle people's trucks and the Russell trucks, and I notified him that we were having this difficulty with all trucks—the long logs interfering with the draw-bars; that was a common objection with all logging trucks having a standard height; we never used the low trucks; I told the Seattle Company it would be a good idea to have trucks built that way to lower the draw-bars; I told them that along in the Spring of 1914, I could not say just when, but it was during some of their calls; we just talked about it, that it should be done on account of the long logs sagging; we are hauling long logs at the present time and still using trucks with both high draw-bars; we find we have trouble on account of interference by the logs, but we are getting along with the ordinary high trucks with high draw-bars; we have had accidents caused by the logs sagging down on the draw-bar, but have not taken any steps to have the trucks reconstructed by lowering the draw-bars, but if we ever ordered any more trucks we would order them

*Testimony of Ira L. Withrow.*

with the low draw-bar at one end; this would require considerable reconstruction on a car of this type after they are already built; we commenced hauling these long logs sometime after the first of February, 1914; we commenced operations on the 9th of February and started hauling long logs shortly afterwards; we started cutting long logs then; the buckler might have been a couple of weeks, or such a matter, ahead of the bunks when we started up; we started hauling about ten days or two weeks after the 9th of February, and Mr. VanCleve was down there on the visit that I spoke of soon after we started up; it was at that time that I made this suggestion to VanCleve that the difficulty could be overcome by dropping the draw-bar at one end of the truck; I didn't suggest any way of doing that no more than just dropping the draw-bar; after I talked with Mr. VanCleve about it I took it up with the Seattle Car Company; it was along about the time we talked about it—there was nothing said in the order—the order was in; it was about three months after this conversation with Mr. VanCleve that we received the order from the Seattle Company; we didn't take up with them the question of making those trucks with the low draw-bar; the order had been placed and we let it pass; we have no trucks with the low draw-bar.

Thereupon the defendants offered in evidence the file wrapper of Mr. Chandler's application, which was received in evidence, marked "Defendants' Exhibit A." The following portion of said file wrapper being a letter



*Testimony of Ira L. Withrow.*

from the Examiner in the Patent Office to Mr. Litzenberg, the attorney for Mr. Chandler, the applicant, dated March 4, 1915, was read.

“This application has been examined. Attention is called to Number 951,253, Magor, March 8, 1910; Fig. 3; Trucks, Four Wheel, Bogies. It will be noticed that the couplings at each end of the truck are below the standard height. This is apparent by comparison thereof with the height of the wheel—the height being about the same as that shown in applicant’s drawing for his lower coupling. It is held that there would be no invention in elevating one of these couplings to standard height. All the claims are therefore rejected on the reference and for the reason stated.”

The following portion of said file wrapper being the argument of the attorney for the applicant accompanying an additional claim filed in consequence of the above letter of the Examiner was read, and is as follows:

“Reconsideration of the case is respectfully asked for the reason that the Magor patent referred to does not in any way suggest the idea which constitutes the invention of this application. There is absolutely nothing to indicate whether the draw-bars of the Magor patent are below the standard height or not. The principal object of the Magor invention is to provide a car truck in which the pull upon the draft rigging of the truck is communicated as directly as possible to the



*Testimony of Ira L. Withrow.*

load. In order to take as much of the draft strain as possible from the trucks themselves. In the present case the draft rigging is connected directly to the bunk, and in accordance with the present improvements is pivoted thereto so that as the logging train takes a curve the two bunks of each co-operating pair of bunks may remain parallel while the draft rigging on each truck may swerve sufficiently to preserve its alignment with the co-operating draft rigging and the connecting rod between the two. There is absolutely no suggestion in the patent that the draft rigging of these trucks is below standard, and the position of the draft rigging relative to the supporting part of the car bunk, as shown in the drawings, Fig. 5, of the Magor patent, very clearly indicates that the very objection which applicant is seeking to overcome would be present in the Magor device. It is well known that patent office drawings are illustrative only of the invention, and there cannot properly be any comparison between the drawings of one case and the drawings of another as to proportions. If this were true, then the distance of applicant's low draw-bars below the bunk, is much greater than the distance between the supporting surface of the Magor car bunk and his draw-bars. On the other hand, applicant's standard draw-bar is about the same distance below the supporting surface of his car bunk, as are both of the Magor draw-bars below the supporting surface of his car bunk, see Fig. 5. It will be noticed of course, that the Magor bunk has at its opposite ends the upstanding bunk stakes W, which give the appear-

*Testimony of Ira L. Withrow.*

ance that the car bunk is considerably above the draw-bar.

This, however, is not the question involved. The Supreme Court has decided that "The idea is the invention. The fact that the carrying out of this idea is simple, does not negative invention, but really supports it." *Gill v. U. S.*, 160 U. S. 426.

The idea constituting the invention of this application brings into existence an improvement in car bunks which overcomes a very common objection, clearly set forth in the opening statement of this application, and an idea which has not yet been brought forth in the prior art.

It is most earnestly hoped the Examiner will give early and favorable consideration to this application, as it is one of considerable importance in this part of the country where the handling of long logs on logging railroads built through rough country, is necessary, and where every precaution must be taken for safety."

The defendants then offered in evidence a certified copy of the Magor patent referred to in the above letters. In connection with this offer the attorney for the plaintiffs admitted that it is a very common practice to have both draw-bars of logging trucks below the standard height. Said certified copy was received in evidence and marked "Defendants' Exhibit B," and omitting the certificate, is as follows:

951,253.

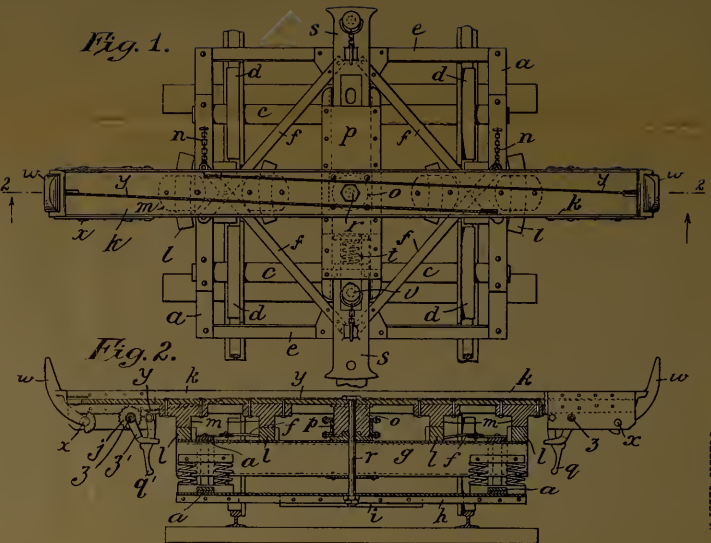
APPLICATION FILED APR. 23 1908.

B. MAGOR.

OAR TRUCK.

Patented Mar. 8, 1910.

3 SHEETS—SHEET 1.



Attest:  
*Walter Thompson*  
 for Applicant

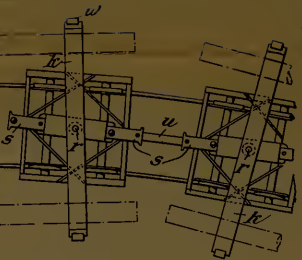
Inventor:  
*Bruce Magor*  
 by *Edw. Underhill May*  
 Atty.



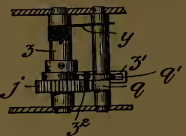
951,253.

B. MAGOE.  
GAR TRUCK.  
APPLICATION FILED APR. 23, 1909

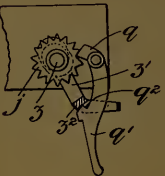
Patented Mar. 8, 1910.  
3 SHEETS—SHEET 3.



*Fig. 6.*



*Fig. 8.*



*Fig. 7.*

Attest:  
Matth. Thompson  
Jame H. Thompson

# UNITED STATES PATENT OFFICE.

BASIL MAGOR, OF NEW YORK, N. Y.

## CAR-TRUCK.

951,253.

Specification of Letters Patent.

Patented Mar. 8, 1910.

Application filed April 23, 1908. Serial No. 491,767.

*To all whom it may concern:*

Be it known that I, BASIL MAGOR, of the borough of Manhattan of the city of New York, in the country and State of New York, have invented certain new and useful improvements in Car-Trucks, of which the following is a specification, reference being had to the accompanying drawings, forming a part hereof.

The principal object of the invention is to provide a form of car truck which shall be particularly adapted for the transportation of logs. For such work, it is common practice to provide each car truck with a long transverse member, known as the bunk, supported above the car trucks upon the bolster and adapted to receive the ends of the logs; and two such trucks, when thus joined together by a load of logs, constitute a single car or element of the logging train and require no other connection between them than the logs themselves. In these logging trains, it is desirable that the pull upon the draft rigging of the trucks be communicated as directly as possible to the load in order to take as much of the draft strain as possible from the trucks themselves. In the present case, the draft rigging is connected directly to the bunk and, in accordance with the present improvements, is pivoted thereto so that as the logging train takes a curve the two bunks of each cooperating pair of bunks may remain parallel while the draft rigging on each truck may swing sufficiently to prevent its alignment with the cooperating draft rigging and the connecting rod between the two. Moreover, in accordance with the present improvements, the ends of a connecting rod are received in relatively long connecting heads upon the trucks so that the ends of these rods are brought as near the center of the car trucks as possible, whereby, as the train is backed, there will be the less tendency to push the connecting rods and the cooperating draft bars out of alignment.

Another feature of the improvements consists in providing an underling member upon the frame of the truck which member is so arranged above the rails as to support the frame thereupon whenever the wheels accidentally leave the track. This member, moreover, is placed low enough to prevent the wheels from striking the ties and thereby from running over the ties and destroying the track whenever the truck jumps the

track, the truck, in such a case, sliding upon the track through the medium of said member which overhangs the track on each side.

Still another feature of the improvement consists in the provision of stakes pivoted upon each side of the bunk to return the load and means on each side of the bunk to control the stake on the other side, whereby the load may be dropped on either side of the truck by workmen stationed upon the other side of the track.

The improvements referred to will now be described in connection with the drawings and together with other features of 70 improvements which need not be particularly alluded to at this point.

In the drawings: Figure 1 is a plan view of a truck embodying the improvements. Fig. 2 is a view in transverse section, the plane of section being indicated by the line *g-g* in Fig. 1. Fig. 3 is a side view. Fig. 4 is a detail view in plan of one end of the draft bar. Fig. 5 is a view in longitudinal section. Fig. 6 is a view on a smaller scale illustrating the application of the trucks to the carrying of logs. Figs. 7 and 8 are detail views of means for controlling the stakes upon the ends of the bunks.

The frame of the truck will be seen to consist of the two side members *a* provided with suitable bearings *b* to receive the axles *c* of the wheels *d*, and transverse members *e* connecting the ends of the side members which extend, at each end, beyond the wheels. In addition to these side and transverse members, the frame includes diagonal bracing members *f*, each of which extends from the center of one of the transverse members to a point near the center of one of the side members. The bolster *g* is spring supported as usual upon the spring-carrying plank *h*, which extends transversely across the frame. In the present case, this plank is arranged underneath the frame, being of a sufficient length to overlie the track on each side, and is hung low enough so that when the wheels leave the track it will strike the track before the wheels have dropped to the ties, thus leaving the frame supported upon the track and preventing the wheels from running over the ties and tearing up the tracks. In order to limit the sidewise motion of the truck when it is thus supported through the medium of this elongated plank, the latter is provided with a cleat or cleats *i* arranged intermediate its ends and projecting down-



wardly so as to come in contact with the track on either side in case the truck tends to run off the track at that side.

- The bunk  $b$  is supported upon the bolster 5 through the medium of side bearing pieces  $7$  arranged thereupon and cooperating bearing pieces  $m$  arranged upon the underside of the bunk. The latter is pivoted at its center and may thus twist about upon the side bearings on the bolster, its range of movement however being limited by stop chains  $n$  which prevent the bunk from working off from the side bearings. Projecting downwardly from the center of the bunk is a cylindrical bracket  $o$  which is rigidly secured to the bunk and forms a pivot for the attachment of the draft rigging  $p$  which is arranged between the bunk and the bolster. A fastening pin or bolt  $r$  is passed through the bunk, cylindrical bracket, draft rigging, bolster and spring plank and fastens all of these parts together.

- The draft rigging is provided with connecting heads  $s$  which work against the draft rigging springs  $t$  as usual. The heads, however, as will be seen, are considerably elongated so that the ends of the connecting rods  $u$  may be carried well in toward the center of the truck where they are secured through the medium of connecting pins  $v$ . Thus will the alignment of any two cooperating draft bars and their connecting rod be preserved whether the train is moving forward or backward. On each side of the bunk stakes  $w$  for retaining the load are pivoted, the pivots  $x$  being beneath the center of gravity of these stakes when they are in their normal positions, so that when released the stakes will drop automatically. The stakes are retained in their normal positions through the medium of a chain or cable  $y$ , each such chain or cable being connected to means upon the opposite side for raising the corresponding stake into operative position. Such means may consist, for instance, of a roller  $z$  to wind the cable on and a ratchet  $j$  secured to the roller and controlled by a pawl  $q$ , (Figs. 2, 7 and 8). The cable may be wound up by a key inserted into one end of the roller  $z$  (Fig. 2); and by moving the pawl handle  $q'$  to the left in Fig. 2, the pawl is disengaged from the ratchet and the stake upon the opposite side drops by its own weight. A loose arm  $z'$  is provided upon the roller  $z$  and has a shoulder  $z''$  which fits into a notch  $q''$  on the pawl in order to hold the pawl in a particular position and to prevent the ratchet  $j$  and roller  $z$  from moving in either direction.

- In Fig. 6, it will be seen what the relative arrangement of the parts is in a logging train made up of the approved trucks, when such train takes a curve. The logs are indicated in broken lines, being stretched across the respective bunks of cooperating trucks.
- The forward truck of each pair of trucks is connected to the rear truck of the pair in advance through the medium of a connecting rod  $u$ . The two connecting rods shown in Fig. 6 are relatively somewhat shorter than might be employed in actual practice but they sufficiently illustrate the actual practice brought out in this figure. Such point is the alignment of the draft riggings on the trucks connected by the rods  $u$ ; and it will be seen that the pull upon the forward trucks in each case is applied at the center of the corresponding bunk and that said pull is in the direction in which the truck extends at that point and not necessarily normal to the position of the bunk, the latter, as is obvious, being always parallel to the cooperating bunk.
- I claim as my invention:
1. The combination with the truck frame, bolster and wheels of the spring-carrying plank elongated so as to extend beyond the wheels on each side and projecting below the truck frame to a level less than the height of the track from the wheel base.
  2. The combination with the truck frame, bolster and wheels of the spring-carrying plank elongated so as to extend beyond the wheels on each side and projecting below the truck frame to a level less than the height of the track from the wheel base, and means upon the underside of said spring-carrying plank to limit the lateral movement of the truck when supported upon the rails through the medium of said spring-carrying plank.
  3. In a car truck, the combination of a bunk to receive the load, and draft rigging pivoted thereto.
  4. In a car truck, the combination of a long transverse member to receive the load, a downwardly projecting member secured to the central part of said transverse member, and draft rigging pivoted to said downwardly projecting member.
  5. In a car truck, the combination of a bolster, a bunk carried thereby for receiving the load, and draft rigging between the bunk and the bolster and pivoted to the bunk.
  6. In a car truck, the combination of a bolster, a bunk carried thereon to receive the load, a downwardly projecting bracket secured near the center of the bunk, draft rigging between the bolster and the bunk and pivoted upon said bracket, and a fastening member extending through the bunk, bracket, draft rigging and bolster.
  7. In a car truck the combination of a bunk pivoted to the truck, side bearings for the bunk, and a stop chain to limit the relative movement between the bunk and truck.
  8. In a car truck, the combination of a bolster, a bunk pivoted near the center of the bolster, side bearings upon the bolster for

the bunk to rest upon, and a stop chain to limit the relative movement between the bunk and bolster and prevent the bunk from moving off from the side bearings upon the bolster.

9. The combination of a car truck having pivoted draft bars provided with connecting heads, and a connecting rod for connecting two car trucks, the ends of the connecting rod being adapted to be inserted well into

the corresponding connecting heads of the two trucks, whereby the alignment of the connecting rod and draft bars may be preserved under all conditions.

This specification signed and witnessed 15 this 20th day of March A. D., 1909.

BASIL MAGOR.

Signed in the presence of—

RALPH SAWYER,

PETER P. BECK.

*Testimony of Ira L. Withrow.*

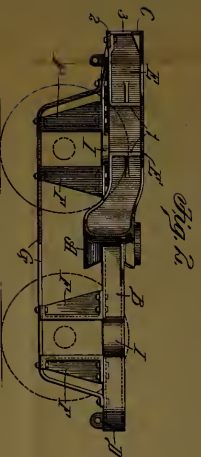
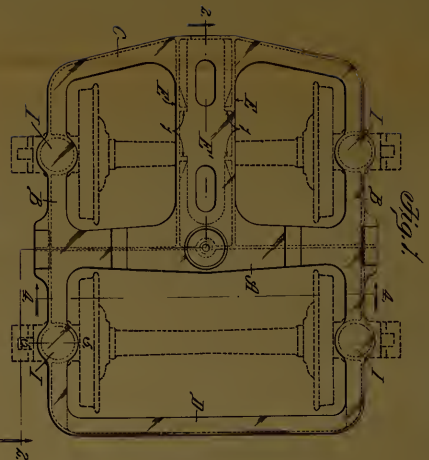
Defendants then offered in evidence a certified copy of a patent issued to Gustav Komarek and referred to in the answer. Said certified copy was received in evidence and marked "Defendants' Exhibit C," and omitting the certificate, is as follows:



1,008,921.

G. KOMAREK.  
LOG TRUCK.  
APPLICATION FILED AUG. 21, 1911.

Patented Nov. 14, 1911.  
2 SHEETS-SHEET 1.



Witness:  
Geo. W. Roberts  
Will L. Chasel

Inventor,  
Gustav Komarek,  
By Paul A. Kuehn atty.

G. KOMAREK.

LOG TRUCK.

APPLICATION FILED AUG. 21, 1911.

1,008,921.

Patented Nov. 14, 1911.

2 SHEETS-SHEET 2.

Fig. 3.

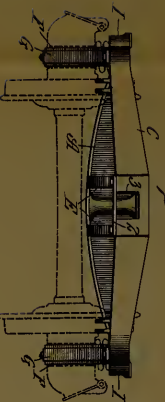


Fig. 4.

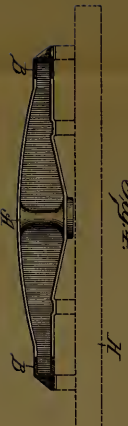


Fig. 5.



Witnesses:  
Geo. P. Palmer  
Wells P. Palmer

Inventor,  
Gustav Komarek,  
By Paul R. Kowen, atty.



# UNITED STATES PATENT OFFICE.

GUSTAV KOMAREK OF ST. LOUIS, MISSOURI, ASSIGNOR TO CHARLES L. GILBERT, OF ST. LOUIS, MISSOURI.

## LOG-TRUCK.

1,008,921.

Specification of Letters Patent.

Patented Nov. 14, 1911.

Application filed August 21, 1911. Serial No. 645,145.

*To all whom it may concern:*

Be it known that I, Gustav Komarek, a citizen of the United States, residing at St. Louis, Missouri, have invented a certain new and useful Improvement in Log-Trucks, of which the following is a full, clear, and exact description, such as will enable others skilled in the art to which it appertains to make and use the same.

10 This invention relates to log trucks such as are used for transporting long logs, one truck being arranged adjacent each end of the log.

The object of my invention is to provide 15 a log truck of simple construction which can be manufactured at a low cost.

Figure 1 of the drawings is a top plan view of a log truck constructed in accordance with my invention; Fig. 2 is a side elevational view partly in vertical section on the line 2-2 of Fig. 1; Fig. 3 is an elevational view of the front end truck; Fig. 4 is a vertical transverse sectional view taken on the line 4-4 of Fig. 1; and Fig. 25 5 is a vertical transverse sectional view taken on the line 5-5 of Fig. 1.

Briefly described, my improved log truck consists of a cast metal frame provided with a bolster, side and end sills and draft beams, 30 all integrally connected together, and pedestals on the side sills for receiving the wheel boxes which coöperate with the wheel axes of the truck.

Referring to the drawings which illustrate the preferred form of my invention, A designates a bolster whose end portions are integrally connected to side sills B. The front and rear end sills C and D, respectively, of the truck are integrally connected to the side sills B; and draft sills E, which are arranged between the bolster and the front end sill C, are integrally connected to said bolster and end sill, as shown clearly in Figs. 1 and 2. Pedestals F are secured to the side sills B for receiving the journal boxes which coöperate with the wheel axes of the truck, as shown in broken lines in Figs. 1 and 3, and suitable tie-bars G are connected to the lower ends of the pedestals 50 and to the side sill on each side of the truck, as shown in Fig. 2. The bunk H, shown in broken lines in Fig. 4, on which the logs rest, is supported upon the bolster A of the truck, and the side frames B are provided with integral pockets I for re-

ceiving springs, not shown, which are arranged between the frame of the truck and the journal boxes.

The side and end sills of the truck are preferably channel-shaped in cross section and arranged with their horizontal legs or flanges projecting inwardly, as shown in Figs. 2 and 4, and the bolster A is preferably I-shaped in cross section, the vertical web of the bolster being integrally connected to the vertical webs of the side sills, and the top and bottom flanges of the bolster being integrally connected to the horizontal flanges of the side sills.

The draft beams E are provided with integral lugs or abutments 1 which coöperate with the follower plates of the draft ing- 70 ging, not shown, and a carry-iron 2 is connected to said draft beams for supporting the draw-bar which passes through an opening 3 in the front end sill C of the truck. A cover member E', which is formed integral with the draft beams, is integrally connected to the top flange of the bolster and to the top flange of the front end sill C 80 C so as to reinforce and strengthen the draft beams and tie them securely to the bolster and to the front end sill. I prefer to arrange the draft beams in a higher horizontal plane than the side sills, as shown in Fig. 2, and therefore the rear ends of said draft beams are curved downwardly at the point where they are connected to the bolster and the intermediate portion of the front end sill C is inclined upwardly so as to provide 90 for this arrangement of the draft beams.

A log truck of the character above-described, is exceptionally strong and rigid and can be manufactured at a low cost because it consists of a one-piece cast metal 95 frame having draft beams formed integral with the bolster and the front end sill of the truck both of which are integrally connected to the side sills of the truck, the pedestals and tie-bars being the only detachable or removable elements of the truck.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent is:

1. A log truck having a cast metal frame which consists of side sills, end sills, a bolster, and draft beams all integrally connected together, and pedestals secured to the side sills.

2. A log truck provided with a front and 110

1 a rear end sill and side sills integrally con-  
2 nected to said end sills, a bolster integrally  
3 connected to the side sills, and draft sills  
4 integrally connected to the bolster and to  
5 the front end sill and arranged in a higher  
6 horizontal plane than the side sills.

7 3. A log truck provided with a front end  
8 sill and a bolster and side sills formed in-  
9 tegral with said end sill and bolster, and  
10 draft beams provided with a top cover plate  
11 that is integrally connected to the front end  
12 sill and to the bolster.

13 4. A log truck having a cast metal frame

14 | which comprises end and side sills integrally  
15 | connected together, a bolster formed in-  
16 | tegral with said side sills, and draft beams  
17 | arranged in a higher horizontal plane than  
18 | said side sills and connected to the bolster  
19 | and to the front end sill.

20 | In testimony whereof I hereunto affix my  
21 | signature in the presence of two witnesses.

22 | GUSTAV KOMAREK.

23 | Witnesses:

24 | SHENWOOD S. KNIGHT,

25 | Wm. G. BYRDENMAN.

26 | Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents,  
27 | Washington, D. C."

d side sills integrally connected together, a bolster integrally connected with said side sills, and draft beams arranged in a higher horizontal plane than said side sills and connected to the bolster and to the front end sill.

provided with a front end sill and side sills formed integrally with said end sill and bolster, and provided with a top cover plate connected to the front end bolster.

having a cast metal frame

which comprises end and side sills integrally connected together, a bolster formed integrally with said side sills, and draft beams arranged in a higher horizontal plane than said side sills and connected to the bolster and to the front end sill. 15

In testimony whereof I hereunto affix my signature in the presence of two witnesses. 20

GUSTAV KOMAREK.

Witnesses:

SHERWOOD S. KNIGHT,  
WM. G. BRIDGEMAN.

It may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

*Testimony of Ira L. Withrow.*

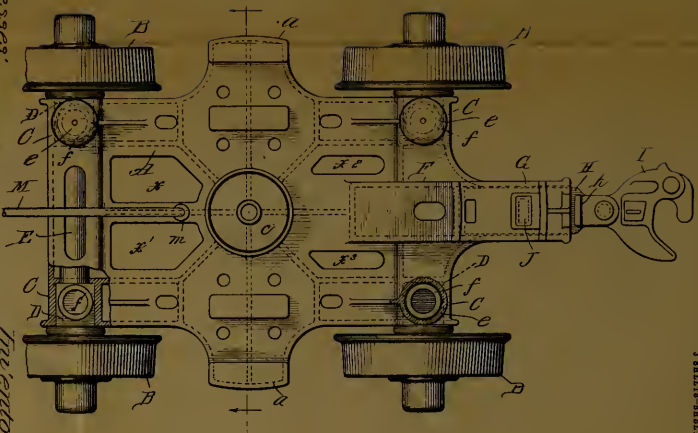
Counsel for the plaintiffs objected to the introduction of these patents on the ground that they do not touch the question in issue, but are intended to show differently constructed truck frames, and do not disclose or suggest the idea involved in this invention. The objection was overruled.

Defendants then offered in evidence a certified copy of patent No. 1,032,348, issued to William P. Bettendorf for a car truck. Counsel for plaintiffs objected to said offer on the grounds indicated above, and for the reason that inner draw-bars are not shown. The objection was overruled and the certified copy was received in evidence, and marked "Defendants' Exhibit D," and omitting the certificate, is as follows:

1,032,348.

W. P. BETTENDORF, DEC'D.  
J. W. BETTENDORF, ADMINISTRATOR.  
RAILWAY CAR TRUCK.  
APPLICATION FILED MAR. 5, 1910.

Patented July 9, 1912.  
3 SHEETS-SHEET 1

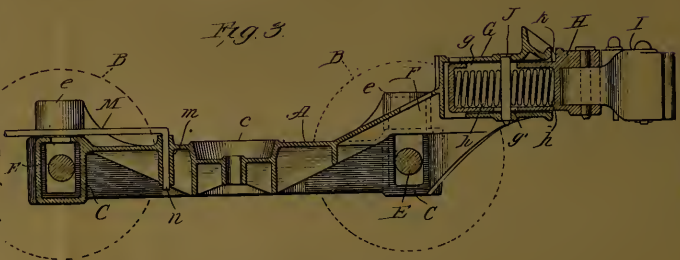
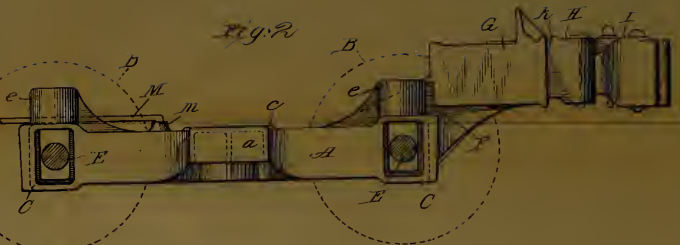


Witnesses:  
Howard Baxter, William P. Bettendorf,  
Attorneys  
by David H. Thompson

1,032,348.

W. P. BETTENDORF, DEC'D.  
 L. W. BETTENDORF, ADMINISTRATOR.  
 RAILWAY CAR TRUCK.  
 APPLICATION FILED MAR. 6, 1910.

Patented July 9, 1912.  
 3 SHEETS-SHEET 1.



Witnesses:  
 Attest: William P. Bettendorf  
 by Stanton, Plummer & Co.  
 Attys.





# UNITED STATES PATENT OFFICE.

WILLIAM P. BETTENDORF, OF BETTENDORF, IOWA; J. W. BETTENDORF, ADMINISTRATOR OF SAID WILLIAM P. BETTENDORF, DECEASED.

## RAILWAY-CAR TRUCK

1,032,348.

Specification of Letters Patent.  
Application filed March 5, 1910. Serial No. 547,488. Patented July 9, 1912.

*To all whom it may concern:*

Be it known that I, WILLIAM P. BETTENDORF, a citizen of the United States, residing at Bettendorf, in the county of Scott and State of Iowa, have invented new and useful Improvements in Railway-Car Trucks, of which the following is a full, clear, and exact description.

My invention relates to railway car trucks and particularly to the trucks of cars from which the body may be readily lifted, or tilted to one side or the other while supported thereby.

The object of my invention is to enable the body of the car to be thus manipulated without disconnecting or uncoupling the running gear of the remainder of the cars of the train.

Another object of my invention is to provide a truck body which combines the truck-holster, the draft-rigging support, the journals for the wheels and the housing for the cushioning elements for said wheels in one integral casting.

These and other advantages are obtained by the means hereinafter fully described and as particularly pointed out in the claims.

In the drawings:—Figure 1 is a plan view of my improved truck. Fig. 2 is a side elevation thereof. Fig. 3 is a longitudinal central section of the same. Fig. 4 is a transverse central section. Fig. 5 is a detail view showing one corner of the truck-frame in section.

In the drawings A represents a rectangular frame which is, preferably, cast in one piece of metal, and has the edges thereof flanged downward. At the center of length of each side thereof, frame A is provided with side extensions *a, a*, that enter between the wheels B, *b*, of the truck and practically serve as the ends of an integral truck-holster portion. Generally speaking the plane of the upper surface of said frame A is the same throughout, except at its center of length and width it is provided with a

single female central bearing *c*, and at its ends over the axle of the car-wheels is shown to be slipped to a slightly higher plane. Under each end of truck-frame A, it is provided with depending rectangular housings C, the outer sides of which are removed and

adapted to receive rectangular journals *d* of boxes D for the journals of the car axle. The lower ends of the rectangular housings

are adapted to have a limited vertical movement, and the inner walls of said housings have vertically elongated openings therein through which the axle *E* extends and in which limited vertical play of the axles is accommodated. Immediately over these housings, a dome *e* is made, which is, preferably, cylindrical and is of such interior dimensions as to accommodate car-springs *f*, whose upper ends bear against the closed tops of said domes and whose lower ends extend down through openings in the top of the housing and rest upon the top of the journal-boxes D.

The forward end of the truck-frame is, at its center of width, provided with a longitudinally inclined hollow standard P, which is in longitudinal alignment with the pivot center of the truck, and terminates, at its upper end, in a longitudinally elongated draft-rigging box G into which the shank or draw-bar of the car-couplers of the train, is inserted below the plane of the body of the car. This draft-rigging box G, is rectangular and its forward open end reaches out in front of the transverse plane of the forward edge of the truck, and is reinforced by a suitable marginal bead and on top by transverse and longitudinal walls or webs to enable it to resist the buffing of the upper shoulder of the opposing car-coupler. The draw-bar H of this coupler, *I*, is hollow and is rectangular in cross section, and is, moreover, of a length corresponding to about the length of the interior of the draft-rigging housings. The upper part of the rear portion of this hollow draw-bar, H, is provided with a longitudinally elongated opening, *h*, which is of sufficient dimensions to enable the coil-springs *A, h*, constituting the cushioning element of the draft-rigging to be inserted therethrough. These cushions are arranged in tandem and a pin *j* is inserted between them, when the parts of the draft-rigging are properly assembled. The level of this pin is seated in a suitable counter-sunk opening in the top of the draft-rigging box, and the lower end portion thereof passes down through an aperture *g* in the bottom of the hollow draw-bar and into a suitable opening in the bottom of the draft-rigging box. Pin *j* is flattened laterally; that is, at right angles to the axis of the car axle, and serves as an intermediate bearing element for the ends of the springs. The con-

pler may be either hinged to or made integral with the draw-bar, and may be of any design desired. The draw-bar will, under the buffing strain have a limited cushioned movement before the shoulder & of the coupler comes in contact with the buffing confriance on the top of the forward end of the draft-rigging box.

At a point a suitable distance removed from the female center bearing of the truck frame, and located diametrically opposite the draft-rigging elements, I provide said frame with a vertically disposed socket *m*, the principal portion of the length of which is below the plane of the upper surface of the truck frame. This socket is adapted to receive one of the hooked or down-turned ends *n*, of a longitudinally disposed tie-rod *o*, which, as shown in the drawings, may be used to tie the two trucks of each car together.

The web of the truck frame, its transverse central portion, and its ends are, provided with symmetrically disposed openings *x*, *x'*, *x''*, *x'''*, to reduce its weight, and the under side of said frame is provided with a series of symmetrically disposed downwardly projecting ribs or webs, that preferably, converge toward the center of the frame where they merge into the downwardly extending cylindrical web of the female center bearing. The depth of the ribs or webs, preferably, increases as they extend from the outer edges of the truck frame to the center 35 of the same, and thus reinforce said frame on the principle of a truss, whose center is designed to directly sustain the weight of the car and its load.

What I claim as new is:—

40 1. A cast metal truck-frame for car-trucks extending from axle to axle and from wheel to wheel and having a female center bearing and integral retaining devices for the journals of said axles.

45 2. A cast metal truck frame for car-trucks extending from axle to axle and from wheel to wheel and having integral retaining devices for the axles at each corner and made wider in the transverse plane of the space 50 between the wheels to provide an integral truck-holster.

3. A cast metal truck frame for car-trucks having an integral widened truck bolster portion, and an integral draft rigging support.

4. A truck-frame for car-trucks having an integral widened truck bolster portion, and an integral draft-rigging support.

5. A cast metal truck-frame having a central bearing midway the length of said bolster portion, and an integral draft rigging support.

6. A cast metal truck-frame having a widened truck bolster portion, a female cen-

tral bearing midway the length of said bolster portion, and a forwardly inclined integral standard.

7. A truck-frame for car-trucks extending in a horizontal plane from axle to axle between the wheels, having the under portion of its ends constructed to receive and permit limited vertical play of the journal boxes of the wheels, having domes over said journal boxes to receive the cushioning springs and 75 having a widened central bolster portion.

8. A truck-frame for car-trucks extending in a horizontal plane from axle to axle between the wheels, having the under portions of its ends constructed to receive and permit limited vertical play of the journal boxes of the wheels, having domes over said journal boxes to receive the cushioning springs and having an integral draft-rigging support.

9. A truck-frame for car-trucks extending from axle to axle, having the under portions of its ends constructed to receive and permit limited vertical play of the journal boxes of the wheels, having domes over said journal boxes to receive the cushioning springs, having a widened central bolster portion, and 80 having an integral draft rigging support.

10. A car-truck comprising a cast metal truck-frame extending from axle to axle and from wheel to wheel having an integral center plate, and an opening therein in longitudinal alignment with the pivot thereof, and a connecting rod for connecting one car truck of a pair to another, the ends of which are bent downward and adapted to enter said opening.

11. A cast metal truck-frame for car-trucks extending from axle to axle and from wheel to wheel and a connecting rod one end of which is adapted to be attached to said truck frame at a point to the rear of and in longitudinal alignment with its pivot.

12. A cast metal car-truck comprising a suitable horizontally disposed truck-frame arranged between the wheels and provided with a center-bearing, a standard arising therefrom near the forward end of said frame, and a draft-rigging box supported thereby.

13. A car-truck comprising a horizontally disposed truck-frame arranged between the wheels and provided with a center-bearing, a standard arising from the forward end of said frame, draft rigging supported thereby consisting of a coupler having a hollow draw-bar, and cushioning devices arranged within the same.

14. A horizontally disposed cast metal truck frame for car-trucks extending from axle to axle between the wheels, having the under portions of its ends so constructed as to receive and permit limited vertical play of the journal boxes of the wheels and having integral domes over said journal-boxes extending above the upper surface of the

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truck-frame to receive the cushioning springs.

15. A cast steel truck-frame for car-trucks extending from axle to axle between the wheels and having an integral cored out neck arising, substantially, from the center of width of its forward part, and a draft-rig-  
5 ging box supported thereby.

16. A car-truck comprising a suitable horizontally disposed truck-frame arranged between the wheels and provided with a center-bearing, a standard arising from the forward end of said frame, a draft-rigging box supported thereby, and a coupler having a

hollow draw-bar and having elongated openings in the top and bottom walls thereof, tandem springs within said hollow draw-bar, and a pin inserted through said elongated openings between said springs and having its ends secured in said draft-rig-  
20 ging.

In witness whereof I have hereunto set my hand this 28th day of February 1910.

WILLIAM P. BETTENDORF.

Witnesses:

F. B. FAENZEL,  
F. M. GOODMAN.

*Testimony of F. W. Chriswell.*

F. W. Chriswell called as a witness on behalf of the defendants, and being duly sworn, testified as follows:

I live at Seattle and am engineer for the Seattle Car and Foundry Company. Have been in that position about nine and one-half years; my duties are designing trucks and estimating and looking after any complaint; I am the chief mechanical representative of the Seattle Car and Foundry Company, which is engaged in the manufacture of railway equipment, particularly of railway equipment, freight equipment and logging equipment particularly; my company constructed for the Columbia and Nehalem Railroad twenty logging trucks having one draw-bar higher than the other; the circumstances under which the idea of this method of constructing logging trucks for the handling of long logs was first suggested to me was this: March 16, 1914, I was at the camp of the Clark & Wilson Company with Mr. Vachon and Mr. W. W. Clark. We met Mr. Withrow there and they had various trucks in service, the Northwestern, our trucks and the Russell trucks, and we were discussing the merits of the trucks and Mr. Withrow called attention to the fact that the sagging of the logs interfered with the coupling, and said in order to make them serviceable for hauling long logs the inner draw-bar would have to be lowered; he offered no suggestion how it could be done, just said it should be lowered, asked me if it could be done and I told him it could; Mr. Withrow and Mr. Clark were present at that time and we had the order at that time for additional

*Testimony of F. W. Christwell.*

trucks and he asked if it was possible to make the change; I said it involved changing the patterns and would delay things to make this change at this time, as the patterns were all made and the order sent forward; we didn't wish to make any change at that time so there was no further objection raised; it came out in the discussion that it would mean a change of patterns to make this change in the trucks; this question of the high and low draw-bars next arose when Mr. Kerry was in the market for trucks and our General Manager was down there at Mr. Kerry's camp; when he returned he told me that we would have to build Mr. Kerry's trucks in that way; I explained to him at the same time that this sample truck—it would be difficult to make the change at that time; it would involve pattern changes and would make a delay in delivering the truck so he said he would furnish the trucks just as they are, and if we get the order then we can make the change; we commenced to draw our plans and make our patterns and get ready to manufacture these trucks of the type we subsequently mentioned to Mr. Kerry right after we had the order from Mr. Kerry; we took the order on February 9, 1915, and we started to make the change at that time, but previous to that we had mentally to lay out a change for our other type of truck; we had designed one out for that; I mean the type of truck Clark & Wilson had; we were going to anticipate that trouble by having our patterns changed—at least we were discussing it; I can not say positively the date when we made this plan for a modification of the type of truck that Clark & Wilson used,



*Testimony of F. W. Chriswell.*

but it was before February, 1914, because the man that made them left Seattle and went to Europe, and he made those drawings sometime between our discussion with Clark & Wilson and the time he left; I mean February, 1915, between March, 1914, and February, 1915; Mr. Kerry gave us this order on the 9th of February, 1915, and we proceeded immediately to manufacture the cars; the claim of Mr. Chandler to a patent on this idea was first called to my attention after the patent was granted; Mr. Vachon sent me a clipping from a paper where it was announced that a patent had been granted Mr. Chandler; at that time we had manufactured these twenty trucks for Mr. Kerry's Company, but they were not delivered; I mean the trucks with the high and low draw-bar; between the time we commenced manufacturing these trucks and the time that I learned of the application of Mr. Chandler for a patent I was out at the plant of the Northwestern Equipment Company and met Mr. O'Brien, their superintendent; I believe this was in the early part of April; they were building Mr. Kerry's trucks at that time, and Mr. O'Brien asked me "Are your trucks just like these?" I said, "Virtually the same. There may be a few details, but in type they are the same thing as your trucks." We were referring then to the trucks with high and low draw-bars; he did not at that time inform me that Mr. Chandler, or his Company, made any exclusive claim to the right to manufacture such trucks; he didn't mention it; he did not mention any application for a patent; I had a conversation with Mr. Chandler himself while we were manufac-

*Testimony of F. W. Chriswell.*

turing these trucks and before he notified me of his application for a patent; Mr. Chandler was in our office with two of the Twohys, and we discussed the trucks and the price, but nothing was said during the conversation about patent or anything of that kind then; this was in our office at Seattle; we didn't show them the kind of trucks we were making; I can't say positively whether or not I showed him the drawing, but I don't suppose I did; I don't know that anything was mentioned regarding the high and low draw-bar; I can not say positively whether Mr. Chandler knew at that time that we were making trucks with high and low draw-bar, only the fact that he knew they were similar.

Court: "You didn't intend then to divulge to him that you were making such trucks?"

It was not that we didn't wish to divulge to him that we were making these trucks, but simply it didn't occur to us that there was anything patentable in the idea, or that there was any question about that; it was common practice to make cars with high and low draw-bars; we had built several of them ourselves and it never entered our head that such an idea was patentable; this was long after Mr. Kerry gave us the order for these twenty trucks; it was specified when the order was taken that they should have high and low draw-bars; I believe this was in April, 1915; and the order had been given in February; on that visit Mr. Chandler made no mention to me of any application for a patent; the first I learned that he claimed this idea belonged to him was at the time

*Testimony of F. W. Chriswell.*

the patent was issued; if I am not mistaken, it was sometime in May; I have the letter in my files; Mr. Chandler then made that claim announcing that the patent had been granted; I have been engaged in the construction of logging trucks, car trucks and cars about twenty-three years; we had built a number of cars for different logging concerns where they wished to couple the low trucks having couplers about twenty-six inches from the rail with those 34½ inches high; we built them for the Marysville & Northern, Marysville & Arlington, the Field Timber Company and one or two other concerns where one end of the car was built stereotype, and the other end with the coupler lower to couple with low trucks; we built these cars along in April and May, 1910; all of these trucks were built so they could raise and lower the draw-heads; but they were built that way in order to facilitate shipping; we shipped them out on their own wheels, and in order for them to move on their own wheels they had to have both ends standard height; then a coupler on one end was dropped after they were received; the skeleton logging trucks were of the same type with the adjustable draw-bars; we built one of those for the Marysville & Northern with a standard height coupler; on that truck both ends were raised so that we could drop either pin, but they wanted it so they could couple their locomotive and train with the low trucks which they had, and we built that car with the draw-bars so they could drop them at either end; that was in April, 1910, if I am not mistaken; we built a car for the Hammond Lumber Company in a similar way;

*Testimony of F. W. Chriswell.*

that was a flat-car built with the draw-bars arranged to drop at one end for the purpose of coupling a standard locomotive with the low logging equipment; it is a common practice in passenger-car trucks to build the frames on the two ends of different heights; it is especially necessary in passenger-cars with the bellying sill, what they call the fish bellying sill; the body of the car would interfere with the inner end of the truck frame, consequently they offset that frame, lowering the inner end of the frame; there is no draw-bar usually attached to the frame, though there is one truck or car, a street-car used in New York City known as the hobble skirt car built in 1910 when the narrow skirts were in use; to get a very low car they built the truck with the forward end projecting out past the end of the car with a draw-bar located on the truck; it was not standard height, but it was higher than the inner end. The inner end was dropped down to clear the inner end of the car; that was a matter within my own observation; I believe you will find nearly all locomotive tenders with high draw-bars next to the engine and low where it couples with the train, that is to clear the fire-box, and one thing and another on the tender; nearly all tenders, I believe, have high and low draw-bars; in the case of six wheeled trucks under heavy equipment steel cars the trucks are built with a low frame at one end to clear the fish belly sill.

The attention of the witness was then called to certain illustrations in the Master Car Builders' Associa-

*Testimony of F. W. Chriswell.*

tion, Car Builders' Dictionary of the 1912 Edition, and the witness testified that this is a standard work in common use by car-builders, used by nearly all car-builders a standard reference work and recognized as a standard reference book. The attention of the witness was called to a truck illustrated on page 562 and page 339, and the witness proceeded and testified as follows:

This truck is a six wheeled truck for a steel flat-car, the sills belly down here just as the logs would belly down; the frame of the truck is outside of the wheel the same as on a logging truck; this end does not interfere; Figure 348 is the truck which is used under that car; this line (indicating a line on said drawing) indicates the dropping of that frame; the frame of the truck is not shown on the figure; the drawing shows the frame of the car bottom coming up at an angle, and the end frame is dropped down while the other end is up at the position shown by the two end sills; on the high end it is up at the axle line; the frame of the truck comes above the axle line, say two or two and one-half inches; upon the end where the body bellies down the frame is dropped down to the bottom of the axle line so there is probably six or seven or eight inches difference on the frame to clear the belly of the sill; there is no draw-bar on the truck; the draw-bars are located on the car body itself, and are of the same height at the two ends of the car; there are no draw-bars on the truck itself.



*Testimony of F. W. Chriswell.*

Thereupon the two pages of said book, No. 562 and 339, were received in evidence and marked "Defendant's Exhibit E."

The witness proceeded and testified that it is customary in most kinds of cars having false bodies to attach the draw-bar to the body of the car rather than to the truck, but in the hobble skirt car which had been mentioned before the draw-bar was attached to the truck because the truck projects out past the body of the car, nearly half of its distance; in the case of a logging truck there is no mode of construction feasible except to attach the draw-head to the truck itself, and it is the universal practice so to attach the draw-head; in the Komarek patent, which has a draw-bar high at one end and the frame lower at the other, the only feasible way if they were coupled together would be to attach the coupler to the frame which is lower; in a logging truck the lowering of the frame at one end would necessarily result in the lowering of the draw-head at the same end; no other mode of construction would be possible; from my experience as an engineer and my knowledge of the construction of logging trucks the evident method of overcoming the difficulty which Mr. Withrow and Mr. Kerry encountered in the handling of long logs would be the one Mr. Withrow suggested; the interference was with the draw-bar, and the first thought would be, when you have a car of standard height, to overcome this by dropping the top of the draw-bar; that is self evident; it is the self evident result of the problem presented.



*Testimony of F. W. Chriswell.*

On cross examination the witness testified that the cars he had mentioned which they constructed in 1910 were flat-cars, and one was a logging connected truck connected by continuous timbers; they were cars made up in permanent forms with trucks at the opposite ends which were connected together by the bodies of the cars; some of those cars were made with adjustable bars or draw-heads in order that they may be raised and lowered at both ends; the purpose of that was in order that they might be shipped on their own wheels so that the cars could be adjusted for connection with standard equipment for shipment on their own wheels, and when they were used with logging trains where the equipment was low the draw-bars could be lowered; in these cars there was no coupling or draw-heads on the inner ends of the trucks; they were connected by the beams or by the body of the flat-car; in the hobble skirt car there was no coupling or draw-head on the inner ends of the trucks; they were also connected by the body of the car; in all of these cars referred to in the dictionary the construction is the same, the trucks being connected by the bodies of the cars; the draw-heads are placed centrally of the car, longitudinally but not transversely. The line of pull would come underneath the bunk which carries the log; it must come that way in any case; it would be possible to attach a draw-bar directly to the frame which comes around one the inside without coupling it back into the middle of the truck, and this is sometimes done; the only thing is that it makes the stress through the side frame instead of through the center, and it would not make any differ-

*Testimony of F. W. Chriswell.*

ence so far as tipping is concerned; if the inner end of the truck frame was considerable lower and the strain was applied directly to it tipping would be caused if the pull was up, but the pull is not up; the pull would be in a line with the draft timber; we have never built disconnected logging trucks with the high draw-bar at one end and the low draw-bar at the other until Mr. Kerry was in the market for them; that idea was first brought to my attention when I was down at Clark & Wilson's camp on March 16, 1914; in talking with Mr. Withrow he called attention to the interference of the coupler, and he said that the way out of it was to lower the coupler; I did not immediately make any drawings or sketches, or take any steps to build a truck of that kind; when I returned to the shop I discussed it with the drafting department and told them at their convenience to work out the truck that Clark & Wilson had with this idea, so that in case there was a repeat order we would have it in shape; the truck Clark & Wilson had was an all steel frame truck with both draw-bars of standard height; between the time I was in Clark & Wilson's camp and the time that Mr. Olsen, our chief draughtsman, went to Europe, he worked out a design for truck having a draw-bar at one end higher than at the other; we got a request to furnish Mr. Kerry sample trucks in November, 1914, and furnished him trucks; they did not have the high and low draw-bar; I didn't see Mr. Kerry myself, but our general manager told me he spoke to Mr. Kerry about constructing a truck with the high and low draw-bar; it was not a common practice, and I

*Testimony of F. W. Chriswell.*

didn't wish to introduce anything that was out of the ordinary in the line of construction; we wanted to avoid multiplicity of designs and patterns as much as we could. It was a departure; I didn't have any conversation with Mr. Kerry; Mr. Kerry informed us that he could get these trucks from the Northwestern Equipment Company with high and low draw-bars; at that time the sample trucks had already been furnished; I had seen them and thought they were a practical truck well designed for taking care of long logs, and in order to get the order we told Mr. Kerry that we could build him the same kind of truck; I could see nothing patentable about it; the patent office states there is nothing patentable about the different heights of draw-bars; we furnished twenty logging trucks to Mr. Kerry with the high and low draw-bars; Mr. Withrow discussed with me the question of building these logging trucks with high and low draw-bars; I am absolutely positive that he suggested to me the idea of lowering the inner draw-bar; to a reasonable extent the difficulty can be overcome by raising the log bunk, but where the landings are built it is not practicable; in the truck construction it would be easier to raise the log bunk than to reconstruct the design of the truck frame so as to lower the draw bar, but where landings are built requiring certain heights of bunks this might in some cases mean reconstruction of the landings; in our trucks it would not be any easier because they are all steel and you could not raise the bunk in that case without changing the design of the truck; our first endeavor to produce a logging truck with the high and low

*Testimony of F. W. Chriswell.*

draw-bar was after we knew of Mr. Kerry's order, and then we worked out drawings and built the trucks for the first time; I won't say we built those for the first time; we built some trucks in the meantime, or rebuilt some where we just placed another set of draft timbers on top; we had some low trucks in our shop and the Everett Interurban wanted some trucks to use on their line, and they had to be coupled standard height, so I took it up with their mechanical department and suggested that we just raise one end instead of the two ends and that this was the easiest way out of it; that to raise one end would be cheaper, cost them about half as much as to raise the whole truck; so we just put on wooden drafting around one end and raised the coupler and coupled with the standard equipment, leaving the others down in their present position; this was a detached logging car; that was not to avoid the log; the timber referred to is what we call the draft timber to which the coupler is attached; there are two timbers running lengthways and the draft rod or coupler is placed between them; all we did was to bolt on some short pieces at one end and take the coupler out of its position and raise it up so that it would couple with standard equipment under the Interstate Commerce requirements; that truck was for hauling logs on the Seattle & Everett Interurban; there were eight or ten sets, and we changed all of them just changing one end; it was not necessary to change the other end and was cheaper to change one end; they wanted to comply with the Interstate Commerce requirements so we just raised the couplings on

*Testimony of F. W. Chriswell.*

one end so they could couple; these trucks are still in existence; they are still on the Everett Interurban; these couplers were not raised for the purpose of avoiding the logs, but just simply to comply with the Interstate Commerce requirements; we could do that by raising one end to couple the car with other standard equipment; what is between does not make any difference; they use those trucks in pairs in the same manner that these are used; they had draw-bars on their inner ends twenty-six inches high to the center; we raised the couplers on these cars to thirty-four inches; we raised them eight inches; that, was in February, 1915; the other cars we built in 1910 were flat-cars or connected trucks; they were using both flat-cars and connected trucks; we had furnished them with low trucks, and they wanted to use air-brakes on their trains as they could not get enough power on the hand brakes and they wanted to put in some flat-cars, but the flat-cars had to be standard height, consequently they wanted one end lower to connect with their logging trucks; that is why they lowered them; I discussed with Mr. Withrow this matter of making trucks with high and low draw-bar; we discussed the fact of its being possible to do this, not by reconstructing the trucks we had, but on new equipment; I explained that the patterns would have to be changed on the trucks that were under consideration at that time; it could be done by changing the patterns; at the time this was first brought up the order had been placed in an eastern factory for the castings; in our case the truck is all made of cast steel; the trucks we furnished Mr. Kerry are very similar to those



*Testimony of A. S. Kerry.*

of the Northwestern Equipment Company, but the ones we furnished Clark & Wilson are quite different; they are cast steel; this is built up of steel bars while the bunks we furnished Clark & Wilson was steel frame, in one piece; they didn't have the high and low draw-bars; we never furnished the high and low draw-bar to anybody but Mr. Kerry and on the cars we reconstructed for the Interurban.

A. S. Kerry being called as a witness on behalf of defendants and duly sworn, testified as follows:

I reside at Kerry, Oregon; am engaged in railroading and logging, and am President and Manager of the defendant Columbia and Nehalem River railroad, and one of the defendants in this suit; I cannot remember exactly when this idea of the construction of a detached logging truck with one draw-bar higher than the other was first suggested to me; I think it was sometime in the Fall of 1914; my first intimation came to me, I think, from Mr. Clark; I am not positive about that; I mean Mr. Clark, of Clark & Wilson; I was casting around for logging trucks and made inquiry from Mr. Chandler, of the Northwestern Equipment Company, and Mr. Piggott, of the Seattle Car and Foundry Company, and Mr. Brown, of the Russell Car & Foundry Company; I first made verbal inquiry. The representatives of those companies visited me sometime before I made a written request for specifications and sample car; I think it was in September or October, 1914, that I received the first car.



*Testimony of A. S. Kerry.*

and I think the inquiry was sent in November, the latter part of October or the first of November; two or three months before that I received a stock car from the Russell Car & Foundry Company which was built for a lumber company in Washington, and they wanted me to try it out; we were not logging then, but I could easily see there was about seven inches of clearance within the inside draw-head and the top of the bunk which would not admit of our hauling long logs, and I saw that we must have something that would connect with the main line equipment and at the same time handle our logs; I think that the suggestion came to me first from Mr. Clark in a conversation about the cars that we had received from Mr. Chandler; I told him that I was in the market for cars and would like to have him tell me what his experience was, and he told me there was one difficulty about the cars he received from Mr. Chandler, that they would not stay on a logging railroad, they jumped the track, and he said, "I particularly caution you about having the draw-bars too high. We have trouble on our road. Logs catch the draw-head and cause derailment, not only with Mr. Chandler's car, but with every car we have—Russell's, Seattle and Mr. Chandler's." I would not be positive about Mr. Clark having said to me that I should have the inner draw-bar lowered at that time, but I am under the impression that he did; that was in the Fall of 1914; in sending out my written inquiries I did not specify the high and low draw-bars; I talked to each of their representatives individually, then I sent out the

*Testimony of A. S. Kerry.*

inquiry to Mr. Chandler and the Seattle Car Company and the Russell Company, asking the Russell Company to give me a price on the car that they had furnished, and submit to me some sort of a plan of a car with the lower draw-head. I sent that inquiry out in November, I think, 1914; then I had conversations at various times with the representatives of these companies; the sample cars came, and the representative of the Seattle Car Company called on me; I hadn't yet seen the car; I asked him the height of the bunk over the inner draw-head, and they gave me 11 inches; as a matter of fact it was only about 7 or  $7\frac{1}{2}$ ; Mr. Chandler's car came and it was just exactly what we wanted; the inside draw-head was sufficiently low to haul these long logs, and the outer draw-head was standard to connect with standard coupling; this was the sample set of trucks furnished by Mr. Chandler received about the same time that I received one from Seattle; I think Mr. Chandler's came a little ahead of the Seattle truck. The Seattle car had both draw-heads the same height, and the Chandler car had one low and one high; this was probably in February, perhaps in January, 1915; it was sometime after that, probably in February, that I gave the order for the forty cars; in placing the order for those trucks I visited the shops of the Seattle Car Company in Seattle, and they had on hand forty second-hand cars, and I looked them over and practically agreed to buy them, but didn't sign a contract; Mr. Piggott was going to draw up a contract and send it; they were constructed with a great deal higher bunk; the draw-heads were the

*Testimony of A. S. Kerry.*

same height, but they were a much higher bunk, and they were a shorter car; shortening the pull of the car, the draw-head, would have the same effect as either raising the bunk or lowering the draw-head, because the deflection would not hit the draw-head if the car was short; one timber company's cars are very short and have draw-heads the same height, and they can draw as long a log as we can without having to interfere with the draw-head. I practically gave the order to Mr. Piggot, and he was to draw up the contract, but I didn't receive the contract for some little time, and the more I thought about the equipment the more I was convinced that it was not what I wanted; I already had prices from each of these concerns for a 100,000 capacity car; the sample car we received from the Russell Company was a 60,000 capacity car; Mr. Chandler happened on the scene some days after I had talked the matter over with Mr. Piggot and agreed to sign the contract when he sent it; he made me a quotation on a 60,000 capacity car; the price was so attractive that I made up my mind that I would take the new stuff and discard the old; the original bid these three different concerns made was for a 100,000 capacity and not for 60; Mr. Chandler talked to me, and I practically gave him the order; he was to consult with his superiors and let me know in a day or two, but just before leaving the office he said, "We will furnish them, I am sure of that." That order was for cars with one draw-head low and the other high, new 60,000 capacity cars; within forty-eight hours afterwards the Seattle Car Company's representatives called on me and insisted they had not

*Testimony of A. S. Kerry.*

been given a fair deal because they had not had an opportunity to bid on a 60,000 capacity car, and they didn't think, in justice to them, we should award the contract to Mr. Chandler, that they should at least have half of the cars, and they made me a price that was still a little better than the price that was made by Mr. Chandler, and I divided the order. I telegraphed Mr. Chandler and told him, under the circumstances I thought it was my duty to divide the order; I gave Mr. Chandler one-half of the order and the other half to the Seattle Company; they were to construct their cars with a low draw-head on the inside; I tried to call Mr. Chandler by long distance the next day and found he was in Seattle, and I left word at his office, and the next day took the train and came to Portland to find him; about two days elapsed before I saw him; I gave my first order about the 9th and talked with him personally here in Portland about the 11th; it may have been three days, but not more than that, and I think it was the very next day that I called up his office, and then the next morning took the train and came to Portland and saw him; I told him I had decided to give the Seattle Car & Foundry Company half the order for these forty trucks; I would not say positively that Mr. Chandler didn't tell me at that time that he could claim the exclusive right to make trucks of that type, but I have no recollection of his telling me that. I do not remember that he said anything at that time as to having a patent or claiming a patent right, or having applied for a patent; I could not give you the date when he first notified me that he claimed the exclu-

*Testimony of A. S. Kerry.*

sive patent right to this type of cars, but he notified me that he was going to sue us on account of the infringement of his patent by the Seattle Car & Foundry Company—that he had taken a patent on that car—and I immediately got a bond from the Seattle Car Company to protect me in these patent rights; also from Mr. Chandler; I could not tell without looking up my records how long this was after I gave the order.

Upon cross-examination the witness was shown the letter marked “Complainant’s Exhibit 2,” and testified as follows:

“That letter is similar to the ones which I sent these three different Companies, notifying them that I was in the market for cars; practically the same was sent to all of them—I think exactly the same. I can not remember when Mr. Chandler wrote me in reply to this letter that he could furnish a logging truck with high and low draw-bars, but I think he told me because Mr. Chandler was very resourceful in things of that kind. He was giving information all the time; we had several conversations about it; I am quite sure that I received the letter of which Complainant’s Exhibit 3 is a carbon copy, and in reply I wrote the letter marked “Complainat’s Exhibit 4”; I do not think that this letter was the first time the idea of a logging truck having a high draw-bar at one end and a low draw-bar at the other was brought to my attention; he says “They (Clark & Wilson) told us that if they ordered any more trucks they would want us to furnish them a truck having the outside couplers of



*Testimony of A. S. Kerry.*

standard height and the inside couplers ten inches lower.” That is practically what Mr. Clark told me, that he would have the inside couplers made lower, and would have the axle journals more flexible so they would follow the curve around; Mr. Clark did not say anything how the idea of a high and low draw-bar was brought to his attention; he did not connect Mr. Chandler in any way with any trucks they had except to say that the Seattle cars stayed on the track better. The question of the high and low draw-bar was not discussed at that time only in that advice to me to get a low draw-bar car—I would have difficulty if I didn’t; I think I mentioned to all of these gentlemen that the trucks would have to give a certain clearance, and they were figuring on eleven inches of clearance, and I expected to leave that to their ingenuity as to how they would arrive at it. I was figuring on this clearance between the top of the log bunk and the couplers. Our outer coupling had to be standard height and the point I had in mind was a certain distance between the top of the bunk and the coupler to be given either by raising the bunk or lowering the draw-head, or any way they had in mind to figure it out; I don’t remember all my conversation with the different companies, but I think probably I discussed that point with most of them; any way, I am sure I discussed it after Mr. Chandler and myself talked it over; Mr. Chandler was the first to definitely bring to my attention a plan of that kind, and he told me they could work it out and make a success of it; that was the sample he furnished me, and it was very satisfactory; the samples fur-



*Testimony of A. S. Kerry.*

nished by other companies were of standard height; the Russell Company did not have an opportunity to furnish me a high and low draw-bar; they brought one down there and tried to reconstruct that one, but could not; but we already had their car before they had an opportunity; they never furnished a real sample on this inquiry of mine; the car they furnished had both draw-bars at the same height; I think the price per set at which Mr. Chandler offered to furnish his trucks was \$725, for the pair of trucks; I think \$625 was the price made by the Seattle Company; I divided the order and gave the Seattle Company an order for twenty trucks and Mr. Chandler an order for twenty; the Seattle Company furnished me twenty-sets of trucks similar to the ones furnished by Mr. Chandler, and I am using them and they are all satisfactory; before that I had never seen or heard of any logging trucks of that kind; I was in the logging business about thirty years; it was quite a radical departure from anything of the kind made before; it was quite a difficult problem always to haul long logs without having them to interfere, and we had lots of difficulty; going around the curve the draw-bar would hit the logs and tip the car over or throw it off the track; these trucks with a high and low draw-bar was a very clever solution of the problem. I don't know how we would get along without it in the present system of logging; the short trucks that I spoke of awhile ago would be all right; the center of gravity would be a little higher; they raised their bunk a little bit higher than these bunks; that would not be so serious an objection; of course, they would not

*Testimony of A. S. Kerry.*

be as good a car as this short car; I am not sure a steel car could be constructed as short as a car made of wood. The Benson Timber Company's cars are made of wood and iron and I doubt very much whether these steel and iron cars that we have would be a success made as short as the other car. The trucks ordered from the Seattle Car Company were not identical with the trucks mentioned by Chandler; I merely specified that they must have a low inside and high outside draw-head, and the same capacity and weight of wheels; they specified a steel bunk and Mr. Chandler specified a built up bunk; there is a great deal of difference between the cars—the frame is different; the Seattle truck is just as satisfactory as the Chandler truck with one or two exceptions; the bunk on the Seattle truck was not heavy enough to stand the heavy loads we put on the cars, and it sprung; and the rub irons on the Seattle truck were not long enough for our curvature, and the bunk would not ride on the rub irons making a very heavy curve, 30 degrees curve. Unless it was laid absolutely it would get off the rub irons, cause derailment. Those two features are the only ones that make the cars any different as far as volume of service is concerned; the particular feature which we wished in both logging trucks was the high draw-bar and the low draw-bar; we simply had to have it or we could not log the way we were going to log; we would either have to use a separate draw-bar, what we called raisers, to connect with foreign equipment, or we would have to have the high draw-head on the outside, otherwise our equipment would not connect with the S. P. & S. equip-

*Testimony of A. S. Kerry.*

ment; I don't think I ever suggested the idea of this high and low draw-bar before Mr. Chandler suggested it to me; that letter will indicate that I didn't, although I may have asked Mr. Clark; Chandler told me about Clark & Wilsons' difficulty in a conversation I had, and it may have been the results of our conversation that he wrote that letter. If Mr. Chandler said he told me that he had brought out the high and low draw-bar as a solution of difficulties which Clark & Wilson were having, I would believe it. I don't remember.

Upon redirect examination the witness testified that it would be feasible to handle his long logs with a truck having a sufficiently high bunk and both draw-bars low if it were not for the necessity of connecting with outside equipment; that if they had only the problem of the long logs to solve they could solve it as well with trucks having draw-bars low so that the necessity for one draw-bar high and the other low arises out of the necessity of coupling with other equipment rather than out of the problem of handling long logs.

Upon recross examination the witness testified that if he did not have one high draw-bar and one low he would be put to a great deal of inconvenience in hauling these logging trucks with standard equipment; that his road is a common carrier road and will do a lot of business besides logging business; that an ordinary logging road would not need the high and low draw-head because there is some little objection to it; that if the two cars forming a set get separated they must come together;

*Testimony of E. V. Vachon.*

you can not take the half of one car and use it with the same half of another car, and, as a result, you occasionally have two cars laid up when you might have one if they were all low; if the draw-heads were all the same you could switch them around and use one-half of the car with half of another, while with the different heights of draw-bars all the cars must be together—each is a pair and inseparable. If we wanted to, we could couple a pair between every other flat car or every other box car or every other passenger car, of standard equipment.

E. V. Vachon being called as a witness on behalf of defendants and duly sworn, testified as follows:

I reside in Portland, and am the representative of the Seattle Car & Foundry Company here as salesman; have been in Portland two and one-half years, and have been salesman for that Company for three or four years; I remember an occasion when this question of the interference of long logs with the inside draw-bars of detached trucks and the mode of overcoming that objection was discussed by Mr. Chriswell and Mr. Withrow in my presence; I don't remember the exact date, but it was in the early part of 1914, and we were at the camps of the Clark & Wilson Lumber Company, Mr. Withrow being the superintendent, and were talking with him about the difficulties experienced with long logs in the clearance of the inside equipments; I don't remember just the conversation, but the substance of it was that some arrangement should be made to provide for that, and the

*Testimony of E. V. Vachon.*

practical way seemed to be to lower the couplers on the inside so that they would not interfere, causing accidents or anything of that kind.

On cross examination the witness testified as follows:

Mr. Withrow suggested that this lowering of the couplers on the inside was the practical way; I do not remember his exact words; it was just to the effect that the coupler should be lowered at the inside to take care of that; he thought that was the practical way of obviating the difficulty; this was in the early part of 1914; he did not suggest any way of doing it, he didn't go into the technical part; he suggested that it might be the practical way, as I remember his suggestion—it would be the practical way, or something to that effect, I don't just remember the words; I don't think he suggested any other solution; I do not remember that he made any statement that the Northwestern Equipment Company could build that kind of a car; I have called at their camps at different intervals, and I think the point has been discussed on more than one occasion and even as late as last summer; I have called on Mr. Kerry a number of times about their requirements, and called on him before he sent out this notice that he was in the market for trucks in November, 1914—both before and after—I don't remember calling on him that particular month; I discussed this question of the high and low draw-bar with him; I remember one instance definitely, and that was when Mr. Colvin, our General Manager, and I were at Mr. Kerry's office ne-



*Testimony of Elbert G. Chandler.*

gotiating for equipment, and this point was discussed generally; that was in January, I think, 1915; the point was discussed, but I don't know whether it was suggested at that time that he could have trucks of that type or not; we didn't furnish him sample trucks of that kind.

Elbert G. Chandler being recalled as a witness on behalf of the plaintiffs testified as follows:

The reason I did not apply for the patent before February 25, 1915, was that we had never worked out the mechanical details of the truck to know whether the high or low draw-bar I had was a practical one, and we had to work it out and get it into service before we went to the expense of getting out a patent; we built the sample set of trucks for Mr. Kerry; that was the experimenting that took place; we were about thirty days building that sample set; we had to change the mechanical details of the truck two or three times to get the line of draft in a satisfactory shape. For instance, one draw-bar might be so high and the other so low that when pushing the trucks they would end up—that is, the wheels next to the high draw-bar would leave the track, and it became a mechanical problem to get our line of draft as nearly as possible in a horizontal position; it required some mechanical skill to work it out. I worked it out and embodied it in the sample truck sent to Mr. Kerry; those were the first full-sized trucks embodying the idea that we built; Mr. VanCleve did not suggest to me the idea



*Testimony of Elbert G. Chandler.*

of the high and low draw-bar; the only report he made on the subject was that they were having difficulty and that Mr. Withrow had stated that they would want some truck that would take care of that; Mr. Van Cleve never reported to me that the low draw-bar would solve the question; he reported to me that the difficulty was that the logs struck the inner draw-bars and caused the derailment of the trucks; the first solution that occurred to us was to raise the bunk and give sufficient clearance between the top of the draw-bar and the top of the bunk itself. This had difficulties because it raised the center of gravity to such an extent that it might be dangerous on the rough track you find for logging purposes; Mr. Kerry never made any suggestion to me in regard to the high and low draw-bars; so far as I know his first knowledge in regard to this was obtained from me while we were negotiating for this order; I think he placed the order on the 5th of February; I was there on Friday and my recollection is we acknowledged receipt of the letter on Saturday, and Mr. Kerry came to Portland and cancelled the order verbally on Wednesday following; there were four or five days elapsed between the time I called on Mr. Kerry and his verbal cancellation of the order here at Portland; he said the Seattle Car Company had agreed to furnish him practically the same truck at a price of \$625.00, and that he would cancel the order with us, and if we cared to take one-half the order at that price he would let us have it, otherwise he would place the entire order with the Seattle Car Company; I advised him verbally at that time that the idea of the high and low

*Testimony of Elbert G. Chandler.*

draw-bar was our own; I think my exact words were that the Seattle Car Company could not build him a duplicate of the truck we sent him because the idea of a high and low draw-bar was ours; it is my recollection that I didn't threaten to sue him at that time, but afterwards advised him by letter; I suggested that he better protect himself.

On cross-examination the witness testified as follows:

The problem is to afford a greater clearance between the bunk and the draw-bar; the raising of the bunk was the first solution that occurred to me; to lower the draw-bar was not the first solution that occurred to us, because there were mechanical difficulties in the way; and it was a new departure; no one had ever, as far as I know, carried out the idea before. Next we decided that we could furnish a cast steel goose-neck with each set of trucks by which the cars could be coupled up with the standard height cars that Mr. Kerry would haul over his line; I don't recollect the exact mental process that we went through, but the final decision that came to us was that the clearance might be afforded by lowering the draw-bar; we didn't go through any experiments at all; we gave it considerable study; I don't know just the time that it took us to evolve the idea of affording a greater clearance by lowering the draw-bar; I think it was something about thirty days before I ever thought of lowering the draw-bar at all; before it ever occurred to me that that might be done; I don't claim that it was

*Testimony of Elbert G. Chandler.*

exactly thirty days, it was somewhere about that time; it was approximately thirty days after this problem was presented to me before it ever occurred to me that the difficulty might be overcome by lowering the draw-bar.

Upon redirect examination the witness testified as follows:

I cannot say exactly how many days it was after we found this difficulty before the idea of the high and low draw-bar suggested itself to me; but it was about thirty days before we had a practical construction which we thought would be possible to embody in a logging truck; the first we learned of this difficulty of the logs hitting the draw-bar was at Clark & Wilson's camp sometime in the early part of the year 1914, and it was somewhere about thirty days after that that I struck on the idea of lowering one of the draw-bars.

Upon recross examination the witness testified as follows:

It was somewhere about thirty days after the trouble was reported at Clark & Wilson's before the idea first occurred to me that this difficulty might be solved by lowering the draw-bars.

## CERTIFICATE.

*In the District Court of the United States for the  
District of Oregon.*

Elbert G. Chandler and Northwestern Equipment  
company, a corporation,

*Plaintiffs.*

vs.

Columbia and Nehalem River R. R. Co., a corpora-  
tion, and A. S. Kerry,

*Defendants.*

## CERTIFICATE.

I hereby certify that the appellants have prepared a statement of evidence in the above entitled cause, and duly lodged the same in the office of the Clerk of this Court, and have filed therewith a stipulation by the parties hereto approving and consenting to said statement; and it appearing and being found by consent of both parties that the said statement of the evidence is true, complete and properly prepared, it is therefore **FOUND, ORDERED AND CERTIFIED** that the annexed statement of the evidence attached hereto and the exhibits therewith included be and the same are hereby made a part of the record in this cause as the statement of the evidence therein, and the same shall constitute a part of the record in said cause for the purpose of appeal.

Dated at Portland, Oregon, this 9th day of October,  
1916.

CHAS. E. WOLVERTON,  
District Judge.

Filed October 9, 1916. G. H. MARSH, Clerk.

And afterwards, to-wit, on the 10th day of October,  
1916, there was duly filed in said Court and cause,  
a Praecipe for Transcript, in words and figures as  
follows, to-wit:

### PRAECIPE FOR TRANSCRIPT.

To the Clerk of the above entitled Court:

Please prepare and certify, to constitute the record  
on appeal in the above cause, a transcript of the follow-  
ing documents, omitting endorsements, acceptances of  
service, etc., the record to be printed at Portland, Ore-  
gon:

1. The bill of complaint.
2. The answer.
3. The supplemental answer.
4. The statement of evidence with the order of court  
settling the same.
5. The final decree.
6. The petition of the defendants for an appeal and  
the order allowing the same.
7. The bond of defendants on appeal.

8. The assignment of errors.
9. The citation on appeal.
10. The praecipe.

VEAZIE, McCOURT & VEAZIE,  
Attorneys for Defendants and Appellants.

Filed October 10, 1916. G. H. MARSH, Clerk.



United States of America,  
District of Oregon,—ss.

I, G. H. MARSH, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal in the case in which Columbia & Nehalem River Railroad, a corporation, and A. S. Kerry are Appellants, and Elbert G. Chandler and Northwestern Equipment Company, a corporation, are Appellees, in accordance with the law and the rules of this Court, and in accordance with the praecipe of the appellants filed in said case, and that the said record is a full, true, and correct transcript of the record and proceedings had in said Court in said cause, in accordance with said praecipe, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing record is \$. . . . ., and that the same has been paid by said appellants.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District, on the . . . . . day of . . . . ., 1915.

\_\_\_\_\_  
Clerk.

